



## GALLATIN COUNTY

### STAFF REPORT

**TO:** GALLATIN COUNTY COMMISSION

**FROM:** TOM ROGERS, AICP<sup>TR</sup>  
GALLATIN COUNTY PLANNING DEPARTMENT

**SUBJECT:** REQUEST FOR PRELIMINARY PLAT APPROVAL FOR  
THE HADD SUBSEQUENT MINOR SUBDIVISION

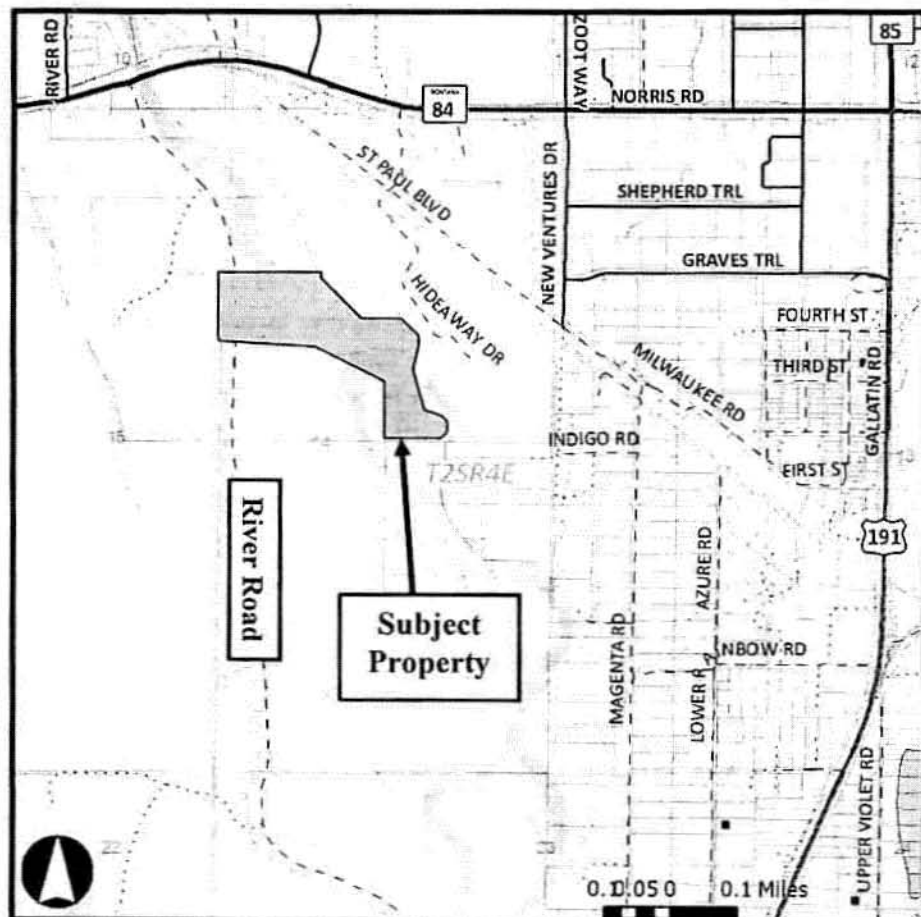
**HEARING DATE:** APRIL 10, 2012, 9:00 AM

#### DESCRIPTION / LOCATION:

Confluence Consulting, Inc., on behalf of Limited Partnership, LLP, has submitted an application for a 2 lot residential subdivision on an existing 6.655-acre lot. The

residential 3.372-acre and a 1.953-acre lot with dedicated open space tracts of 0.842-acres and 0.488-acres respectively. The subject property is within the Four Corner Zoning District and is zoned Rural Residential / Agricultural (RR/A).

The property is described as a portion of Tract A of Certificate of Survey (COS) No. 2235 west of the Gallatin River that passes through said



Tract Located in the Northwest One-Quarter (NW ¼) of Section 14, Township Two South (T2S), Range Four East (R4E), P.M.M., Gallatin County, Montana. In general, the property is located at 9704 River Road, Bozeman, MT

## **BACKGROUND:**

The tract was created by relocation of common boundary shown on COS 2235 filed with the Office of the Clerk & Recorder May 8, 2001 creating 2 Tracts of record. The subject property is bisected by the Gallatin River. The State of Montana has deemed the Gallatin River navigable and claims ownership of the river bed. Certificate of Survey No. 2235 did not depict the ownership of the West Gallatin River. Tracts A and B, shown on the plat, are remainders of the original Tract A of COS 2235 created pursuant to Section 70-16-201 & 202 Mont. Code Ann. (Exhibit A)

Pursuant to §4.A of the Gallatin County Subdivision Regulations (Regulations) states that, "A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed as major subdivisions. All the requirements and procedures of Section 3 of these Regulations must be followed for subsequent minor subdivisions; however, a park dedication is not required.

## **STAFF FINDINGS:**

1. **Zoning District.** The subject property is within the Four Corners Zoning District (Zoning District). The Zoning District was adopted on September 16, 2009 by the County Commission at which time the Commission found the Zoning District to be consistent with the Gallatin County Growth Policy and Four Corners Community Plan.

Specifically, the subject property is zoned Rural Residential / Agricultural (RR/A). The purpose of the Rural Residential and Agricultural Sub-District is to promote and preserve continued agricultural and rural Residential use of property, including waterways, Open Space, trails, and wildlife corridors as important elements of the Four Corners community. Pursuant to Section 3.6 of the Zoning Regulation the number of Lots allowed is based on Gross Average Density. There is no minimum Lot size; Lots may be any size as long as the overall density of the project does not exceed 1.75 Units per acre. The overall density for the proposed subdivision is one unit per 3.328-acres.

However, according to Section 3.7.1 of the Zoning Regulations subdivisions with any Lots smaller than 5 acres shall provide Open Space in compliance with the sliding scale in Table 3.1. Based on the proposed lot size 20% open space is required and shall meet the standards outlined in Section 9.3.4. The subdivision includes the necessary open space on the face of the plat. The method of preserving open space is in accordance with Section 9.3.4.B of the Zoning Regulations in which an individual Parcel owned by an individual Lot owner or other third party, dedicated as permanent Open Space on the plat and meeting all requirements of 9.3.4.A above. In this case the Subdivider will employ ownership by the individual Parcel owned by an individual Lot owner (Exhibit I). Staff has suggested Condition 11 compliance with the open space requirement.

2. **Adjacent Land Use(s).** Land uses surrounding the subject property are predominately residential with agricultural activities further to the west. The Gallatin River lies to the east as shown on the plat. Zoning surrounding the property is Rural Residential/Agricultural (RR/A) on all sides. Please refer to the aerial image attached as Exhibit B.
3. **Topography/Natural Resources.** In general, the property slopes under 5 % in a northerly direction. There are no significant elevation changes or slopes within the subdivision that would require unusual construction methods for road ways, buildings, or installation of utilities.

There are no known geologic hazards (i.e., rock falls, unstable slopes) present within the site. However, the entire Gallatin Valley is susceptible to damage from seismic events. Staff suggests that covenants for the subdivision include provisions, which require all structures to be constructed in compliance with Montana State adopted codes for construction, including codes for the pertinent seismic zone. (See Condition 18.a)

4. **Vegetation/Invasive Weeds.** There is an existing residential structure located in the northwest corner of the property. The Gallatin River and the associated floodway, floodplain and riparian areas dominate the area to the east. As stated in the Applicant Submittal Appendix E a majority of the properties soil type is Bandy-Riverwash-Bonebasin complex, farmland (606A) and is not prime farmland.

Noxious weeds are present on site. However, weeds are scattered throughout the property and are generally young which indicates the property owner has been actively controlling noxious weed populations. The Gallatin County Subdivision Regulations (Subdivision Regulations) require that the Subdividers obtain an approved weed management plan from the Gallatin County Weed Control District prior to preliminary plat approval, which the Subdividers have provided as required. Prior to final plat approval, Subdividers must enter into a Memorandum of Understanding with the Gallatin County Weed Control District, and the final

plat must include a provision for maintenance and weed control. (See conditions 17 and 18.d)

5. **Water Supply / Sanitary Review.** The existing home and guest house are being served by a pressure dosed wastewater disposal systems (GCCHD No. 10333) and individual water supply (GWIC No. 191992). The existing wastewater system is allowed to serve four (4) bedrooms. The system is currently serving two structures with a total of six (6) bedrooms. Therefore, it will be necessary to perform upgrades to the systems to handle the excess flow. System analysis can be found in Appendix F of the Applicant Submittal.

The Gallatin City-County Health Department (GCCHD) will be the primary reviewing authority on the proposed subdivision to insure compliance with the Sanitation in Subdivisions Act and County regulations. The existing system is required to come into compliance by obtaining a new permit and constructing the upgraded system prior to any local health department approval of the subdivision (Exhibit E). Final approval for the subdivision's water supply and wastewater disposal facilities must be obtained from the MDEQ and GCCHD. (Condition 5)

6. **Surface Water.** The Gallatin River bisects the subject property. The Lowline Canal and the Kughen Ditch are located to the west of the subject property. A head gate for the Spain Ferris Ditch is located on the adjacent property to the east of the subject property. In addition, the subject property is within the Hyalite Dam Inundation area (Exhibit F). To insure public safety staff suggests Condition 15. Please refer to the aerial image attached as Exhibit B.

#### **Flood Hazard Evaluation**

The Applicant provided an approved Flood Hazard Evaluation with the Preliminary Plat Application pursuant to Section 10.C.2 of the Subdivision Regulations. The evaluation is located in Appendix B of the Applicant Submittal. The Gallatin County Flood Plain Administrator provided comment which is attached to this report as Exhibit C. To insure compliance with adopted regulations and suggested by the Floodplain Administrator Conditions 12-14 are included.

#### **Agricultural Water User Facilities**

There are no water user facilities on the subject property as shown on Exhibit D, page 36 of the 1961 Gallatin County Water Resources Survey. However, Lowline Canal, Kughen Ditch, and a Spain Ferris head gate are located on adjoining properties. Pursuant to Section 5.D.8.a of the Subdivision Regulations notice of the proposed subdivision shall be given to the applicable water users and/or water conveyance facilities authorized representative of the proposed subdivision. With the Preliminary Plat Application the Applicant provided documentation showing proper notice to the applicable water users and/or water conveyance facilities authorized representative. The correspondence is located in appendix C of the Applicant Submittal.



No comment has been received from the Lowline Canal Company. However, the Kughen Ditch Company provided comment stating they are no known adverse impacts on their facility caused by the proposed subdivision (Exhibit L). In addition, the Spain-Ferris Ditch Company requested that the Subdivider and the Ditch Company enter into a memorandum of understanding addressing potential conflict which is attached to this report as Exhibit M and is a Condition of Approval. (Condition 16)

7. **Groundwater.** Static groundwater depths are estimated to be 6 feet below surface based on one groundwater well on site. The high groundwater depth may cause difficult environmental attributes for the constriction and function of a septic system. Based on well log reports there appears to be adequate water flow for a domestic water supply system. The Applicant provided septic system analysis with the submittal and all water supply and wastewater systems will require environmental health department review prior to approval (Condition 5).
8. **Wildlife and Wildlife Habitat.** The Summary of Probable Impacts (SPI) provides a summary of wildlife observed near the property, and the values of the property for wildlife habitat. As stated by the applicant, there are no known endangered species on the property. However, the property is densely forested with native and non-native trees, shrubs, and other vegetation found on floodplains and the surrounding land. Many species of animals, birds, and other critters inhabit the property. In addition the West Gallatin River host a variety of game and non-game fish including Brook Trout, Brown Trout, Longnose Dace, Longnose Sucker, Mottled Sculpin, Mountain Sucker, Mountain Whitefish, Rainbow Trout, White Sucker, Whitefish, Fluvial Grayling, and Yellowstone Cutthroat Trout. Comment has been received from Trout Unlimited in a letter dated March 27, 2012 affirming concerns raised by the Floodplain Administrator and other agencies. (Exhibit K)

The locations of the buildable areas are located on the western edge of the subject property distal from the river and most of the flora. To insure compliance with regulations and further mitigate the impact of development on wildlife and wildlife habitat covenants are included and required for final plat approval to mitigate conflicts between wildlife and development. (Condition 18.f - j)

9. **Parks/Trails.** As shown on the preliminary plat, no parkland dedication is provided within the subdivision. According to Section 6.G.9.e of the Subdivision Regulations, no parkland dedication is required for a subdivision in which only one additional parcel is created. Additionally, pursuant to Section 4.A.ii of the Subdivision Regulations, park dedications are not required for subsequent minor subdivisions. However, as stated in Staff Finding No. 1 there is an open space requirement to comply with zoning regulations.

10. **Access/Roads.** River Road provides direct accesses to the proposed subdivision. River Road is a County maintained gravel surfaced road. There are no internal subdivision roads being proposed. Proposed Lot 1 has an existing driveway approach off of River Road. An additional approach will be required prior to developing Lot 2.

Staff forwarded the preliminary plat application to the Gallatin County Road and Bridge Department which provided comments on the proposed subdivision in a letter dated January 20, 2012 and is attached as Exhibit G to this report. To insure compliance with the Subdivision Regulations Condition 1- 4 are suggested.

Staff is also suggesting as a condition of approval that the Subdividers waive their right to protest the creation of a Rural Improvement District (RID) for future transportation improvements within the area that the Subdivision may benefit from (see Condition 20).

11. **Utilities.** Utility easements are required and must be shown on the final plat. New utilities shall be installed underground, and must comply with the Subdivision Regulations, which address specific requirements for the location and installation of underground utilities. The location of utility easements within the subdivision must comply with the design standards of Section 6.D.2 of the Subdivision Regulations and shall be included as a condition of final plat approval (Condition 6). Utility easements are shown on the face of the preliminary plat.
12. **Fire Mitigation.** The proposed subdivision is within the Gallatin Gateway Rural Fire District (Fire District). The Fire District can provide fire protection for the subdivision. The correspondence between the Fire District and the applicant are attached to this report as Exhibit H. According to the SPI 3.b the Applicant's preferred fire protection plan follows Appendix I, part 4.2 which is for one-lot subdivisions. However, according to Appendix I.9.gg, One-Lot Subdivisions are defined as a subdivision of an existing parcel of land that creates only one new lot, where the remainder parcel is 160 acres or greater. This subdivision does not meet this definition. Therefore, the fire protection package must follow part 5 of the fire protection package. On the other hand, according to Section 1.7 allows for an alternative Fire Protection Features or Systems in which the alternative fire protection technologies, means, features or systems may be approved by the FPAHJ where they provide fire protection equivalent to or greater than required in this Appendix.

Staff suggests that the Subdividers shall have the Gallatin Gateway Rural Fire District review the fire protection method as to whether it meets the requirements of the Gallatin County Subdivision Regulations prior to final plat approval. (See conditions 7-9 and 18.e).

13. **Mortgagee.** According to the submitted abstract of title, the property is subject to a mortgage(s). As a condition of approval, the Subdividers shall record a

certificate of Consent of Mortgagee(s) on the final plat or a separate document. (See Condition 24).

14. **Notice.** Pursuant to Section 3.F. of the Subdivision Regulations notice of the time and date of the preliminary plat public hearing shall be published in a newspaper of general circulation in the County not less than 15 days prior to the date of the hearing. The notice shall be published twice, with at least 6 days separating each publication. The subdivider, each property owner of record and each recorded purchaser under contract for deed immediately adjoining the land included in the plat shall be notified of the hearing by certified mail not less than 15 days prior to the hearing. Legal notice of the hearing was sent to adjacent property owners via certified mail, return notice required, and published in the *Bozeman Daily Chronicle* on February 19<sup>th</sup> and 26<sup>th</sup>, 2012. As of date of the March 27, 2012 Staff Report, two comments have been received and are attached to the report as Exhibit J.

#### **GALLATIN COUNTY PLANNING BOARD RECOMMENDATION(S):**

On February 28, 2012 the Gallatin County Planning Board reviewed the Staff Report, Applicant Submittal, and listened to public comment on the proposed subdivision. During the February 28 hearing, additional information concerning the Kughen Ditch facility was brought to their attention. Although the water user facility is approximately 950 linear feet from the western boundary of the proposed subdivision, pursuant to Section 5.D.8 of the Subdivision Regulations the ditch company shall be noticed of the proposed action. In addition, the Applicant submitted a number of suggested changes to the Conditions of Approval. In an effort to provide the ditch company an opportunity to provide comment the Planning Board continued their review to March 28, 2012.

At the regularly scheduled hearing on March 26, 2012 the Planning Board continued their deliberations on the application with comments from the Kunghen Ditch Company which are included with report and addressed in Staff Finding No. 6. After careful consideration of all information provided and considering public testimony the Gallatin County Planning Board found the proposed subdivision complies with the Four Corners Zoning Regulations, the application meets the requirements of Section 76-3-608 Mont. Code Ann. of the Montana Subdivision and Platting Act, and the application complies with the provisions of the Gallatin County Subdivision Regulations.

In conclusion the Planning Board voted unanimously to recommend the County Commission approve the proposed subdivision with Staff Suggested Conditions.

## CRITERIA FOR COUNTY COMMISSION REVIEW:

Section 76-3-608 Mont. Code Ann. states that the basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. The criteria of evaluation include:

1. Agriculture,
2. Agricultural Water User Facilities,
3. Local Services,
4. Natural Environment,
5. Wildlife,
6. Wildlife Habitat, and
7. Public Health and Safety

### AGRICULTURE:

The subject property is not in agricultural production or grazing. The current use is residential and the proposed use will be residential. River Road separates the current use from the neighboring agricultural lands. Additionally, the zoning is categorized as rural residential and agricultural. Therefore, the proposed subdivision will have minimal effects on agricultural land or production. However, modicums of measures to mitigate potential conflict between existing agricultural use and the proposed residential development that are addressed in the Covenants to control pets, place future residents on notice the presence of agricultural activities (Condition 18.g-j).

### AGRICULTURAL WATER USER FACILITIES:

As stated in Staff Finding No. 6 there are no water conveyance facilities on the subject property although there are water conveyance facilities on adjacent properties. The water conveyance facility operators have been notified of the proposed subdivision and have not expressed concern at the time of reproduction of this report. Therefore, the proposed subdivision will have minimal, if any, affects on water conveyance facilities or water users.

### LOCAL SERVICES:

**Fire Protection.** The applicant has proposed a fire protection plan outlined above. The subdivider has created a fire protection plan pursuant to §4.2 of Appendix I of the Subdivision Regulations. This plan provides for the safety of the public and allows the



Gateway Rural fire District to provide adequate and standard service for the proposed Hadd Subsequent Minor Subdivision. (See conditions 7-9)

**Law Enforcement.** The Gallatin County Sheriff's Department can provide Law enforcement for the subdivision.

**Emergency Medical Services.** Emergency medical services can be provided by American Medical Response of Bozeman (AMR).

**Schools.** The additional residence will increase the demands on the Bozeman school system. As described in the Bozeman School District facilities Master Plan draft student population has surpassed the elementary schools functional capacity. The Applicant has not provided suggested mitigation for the additional demands caused by this subdivision.

#### NATURAL ENVIRONMENT:

There are no internal roadways or other construction planned for the subdivision. Therefore, impacts on the natural environment will be minimal. Utilities are planned to be installed underground, and all areas disturbed by construction will be re-seeded to natural vegetation.

#### WILDLIFE

The property supports limited wildlife habitat and there are no known critical wildlife habitat, according to Montana Fish Wildlife and Parks (Appendix I of the Applicant Submittal) has been identified in the area. Although incidental wildlife is present and the property is capable support various species of wildlife the impact of the subdivision will have is negligible.

#### WILDLIFE HABITAT:

Similarly to the effects on wildlife due to the location of the project, existing land use in the immediate vicinity, significant transportation corridors adjacent to the property, the anticipated future land use of the area, zoning classification, there are no water conveyance facilities within of adjacent to the property and there are no water ways. Additionally the suggested conditions of approval would further mitigate potential impacts on wildlife. Therefore, based on the aforementioned there is minimal affects on wildlife.

## PUBLIC HEALTH AND SAFETY:

Fire and emergency services have been addressed. The subdivision does not appear to be subject to potential man-made hazards such as high voltage power lines, high-pressure gas lines, underground tanks, nearby industrial or mining activities. Public health and safety provisions are required as conditions of final plat approval. (See conditions 7-15)

## COMPLIANCE:

- 1. The proposed subdivision must provide legal and physical access to each parcel within the subdivision.**

Legal and physical access will be provided to each lot within the subdivision. The required notation of legal and physical access is required on the face of the final subdivision plat (Condition 4).

- 2. The proposed subdivision must provide easements for the location and installation of any planned utilities.**

The preliminary plat provides all required easements for utilities. Easements can be located along property lines and within road right-of-ways (Condition 6).

- 3. The proposed subdivision must comply with the survey requirements of the Montana Subdivision and Platting Act.**

The subdivision final plat must comply with the survey requirements of the Montana Subdivision and Platting Act (Condition 25).

- 4. The proposed subdivision must comply with local subdivision regulations and the review process of the regulations.**

Subdivider and the local government have complied with the subdivision review procedures set forth in the Subdivision Regulations. No variances have been requested.

## **SUGGESTED CONDITIONS:**

If the Gallatin County Board of County Commissioner's recommends approval of this application, the following conditions are suggested:

### **Roads and Access:**

1. The following note shall be placed on the final plat: "Prior to construction of any access point onto River Road, an encroachment permit must be obtained from the County Road and Bridge Department. New encroachments onto River Road are limited to one access point per lot."
2. Sixty (60) feet of River Road centered along the existing River Road alignment shall be dedicated to the public as a road and utility easement for the entire length of the development. All right of way shall be shown on the Final Plat.
3. Areas disturbed by road construction shall be sodded, reseeded, and controlled for noxious weeds.
4. The final plat shall contain a statement requiring lot access to be built to the standards of Section 7.E of the Gallatin County Subdivision Regulations.

### **Public Health and Safety:**

5. State Department of Environmental Quality approval shall be obtained for the subdivision. The subdivider shall make a concurrent submittal to the Department of Environmental Quality and the Gallatin City-County Environmental Health Department. The subdivider shall obtain the Gallatin County Health Officer's approval.
6. All utility easements are to be shown on the final plat. Utility easements shall be centered along side and rear lot lines wherever possible, and shall be twenty (20) feet wide. Underground utilities, if placed in the road right-of-way, shall be located between the roadway and the right-of-way line. Such underground facilities shall be installed or utility culverts provided before the road is surfaced. In addition, the following statement must appear on the final plat:

*"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines*

*and other facilities, in, over, under, and across each area designated on this plat as 'Utility Easement' to have and to hold forever."*

7. The subdivider shall provide a Fire Protection method in accordance with the Gallatin County Subdivision Regulations, including water supply standards. The subdivider shall have the Gallatin Gateway Rural fire District review the fire protection method and all fire protection requirements prior to final plat approval. The subdivider shall obtain written verification from the Gallatin Gateway Rural Fire District that the required fire protection requirements of the Gallatin County Subdivision Regulations have been met.
8. The Subdivider shall provide the Gallatin Gateway Rural Fire District a copy of the final subdivision plat prior to final plat approval.
9. If the Subdivider chooses to have the Gallatin Gateway Rural fire District conduct the required testing and/or plan review, all fees for fire protection water supply testing (\$300 + \$10 per hydrant) and all fees for fire sprinkler system plan review and testing (\$200 per system) shall be paid by the Subdivider as part of the application for final plat approval.
10. The subdivider shall consult with the US Postal Service with regard to mail service, and the type and location of mail receptacles. If a central mail receptacle is to be used, the location and access shall be shown on the final plat.
11. Open Space Tract 1A and 2A shall perpetually remain in that use and be preserved and maintained for passive and active recreation, wildlife habitat, and protection of scenic, and unique or important natural features. The following statement must appear on the final plat:

*No structures shall be constructed within Lot OS Tract 1A or Lot OS 2A.*
12. The final plat shall delineate the 100-year floodplain boundary based on where the base-flood elevations intersect the ground.
13. The required lowest-floor elevation for each building site shall be recorded on the plat or other applicable development document (final site plan, Covenants, etc.).
14. The final plat shall include a note informing potential lot purchasers within the subdivision that even though the building sites are outside of the 100-year floodplain, the risk of channel migration persists.
15. The final subdivision plat shall include the following text if the proposed subdivision is located with the area that would become inundated by flood floodwaters in the event Hyalite/Middle Creek Dam fails. While failure of the dam is unlikely, it is possible. Lot purchases should be notified of this potential risk.



*"This property has been identified by the Montana Department of Natural Resources and Conservation as being inundated by floodwaters in the event **Hyalite/Middle Creek Dam** fails. Residents and tenants should familiarize themselves with the Emergency Action Plan and appropriate evacuation routes."*

16. The Subdivider shall enter into a Memorandum of Understanding with the Spain-Ferris Ditch Company prior to Final Plat Approval. Written verification shall be submitted to the Gallatin County Planning Department prior to final plat approval.

#### **Noxious and Invasive Weed Control:**

17. The Subdivider shall obtain an approved weed management plan from the Gallatin County Weed Control District prior to and construction projects within the site. The approved weed management plan shall be submitted to the Gallatin County Planning Department prior to final plat approval. Areas disturbed by construction shall be seeded and controlled for noxious weeds.

Prior to final plat approval of any phase of the subdivision, the Subdivider shall comply with all pre-final plat requirements of the approved *Weed Management Plan* ("Plan") for all onsite and offsite areas disturbed by any construction related activity.

Notwithstanding the above, all areas disturbed by construction, including areas on-site and areas off-site shall be, as determined by the District, prior to final plat approval, sufficiently controlled for noxious weeds and sufficiently re-vegetated with grasses approved by the District. In addition, subdivider shall, prior to final plat approval, provide evidence of all control and re-vegetation work (and any other pre-final plat vegetation management required by the *Plan*) to the District and the Planning Department.

The subdivider may request an Improvements Agreement, pursuant to the Section 8.b.1.g of the Subdivision Regulations, in lieu of any required seeding and/or control of noxious weeds required prior to final plat. The Improvements Agreement shall state any re-vegetation and weed control work required to be completed prior to final plat be conducted during the next season where seeding and weed control work can reasonably be accomplished.

For the control of noxious and nuisance weeds for any year beyond year one of the approved *Plan*, subdivider shall enter into an Improvements Agreement, pursuant to Section 8.b.1.g of the Subdivision Regulations, with the Gallatin County Board of County Commissioners.

The approved *Plan*, along with written approval from the District that all work required by the *Plan* prior to final plat approval was conducted in compliance with the *Plan*, shall be submitted to the Gallatin County Planning Department at the time of application for final plat approval.

**County Required Covenants:**

18. Covenants for the subdivision shall include the following provisions and be recorded with the final plat:
  - a. All structures shall be built meeting or exceeding the requirements of the current editions of the Fire and Building codes, as adopted by the State of Montana, including building codes for the pertinent Seismic Zone.
  - b. All new structures built on Lot 1 & Lot 2 shall be designed and constructed so the lowest-floor elevation within the structure is at least two feet above the 100-year flood elevation.
  - c. Further subdivision of any lots, including the parks and open space areas, shall be prohibited.
  - d. The control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (7-22-2101 through 7-22-2153 MCA) and the rules and regulations of the Gallatin County Weed Control District.

The property owners association shall be responsible for the control of state and county declared noxious weeds on his or her lot. Both unimproved and improved lots shall be managed for noxious weeds.

- e. All fire protection covenants as required by the Gallatin Gateway Rural fire District pursuant to Section 1.6, Appendix I, Subdivision Regulations:
  - i. Maintenance of Fire Protection Water Supply Features and Fire Department Use (i.e., open water fill sites, buried water tanks) – Fire protection features must be maintained to their original performance capability in perpetuity by, and at the expense of, the property owners. Performance of all fire protection features shall be certified annually, by the use of field measures, by the FPAHJ or by a PE licensed in Montana. If a PE is to be used, a report shall be submitted, in writing, to the FPAHJ to ensure continued specified capability. The annual certification by the PE shall be at the expense of the property owners. The PE shall be approved by the FPAHJ.

The fire department shall have unrestricted use, in perpetuity (at no cost to the fire department) of the fire protection features including but not limited to water sources, pumps, and hydrants.

- ii. Separation Between Buildings on the Same Lot – The separation between all structures protected by approved fire sprinkler systems and all detached, non-sprinkler protected structures, including accessory buildings, shall be a minimum of 50 feet.
- iii. Driveways to Structures – To allow for emergency vehicle access to structures, the property owner shall provide a driveway meeting the following requirements as approved by the FPAHJ: a minimum unobstructed driving surface of 12 feet for driveways less than 300 feet long and a 16 foot driving surface for any driveway over 300 feet long; a vertical clearance of 15 feet; and a four foot zone of reduced vegetation on each side of the driving surface. If a driveway that is less than 16 feet wide is approved by the FPAHJ, turnouts shall be designed and constructed every 300 feet along the driveway's length.
  - 1) For all buildings or structure sites on driveways over 300 feet in length, the property owner shall provide a turnaround including but not limited to a drive-through, cul-de-sac or hammerhead turn-a-round.
    - A turnaround shall be within 50 feet of the building or structure when there is no community water system with fire hydrants.
  - 2) All gates, bridges, culverts, cattle guards and all related constructs affecting access shall be a minimum of two feet wider on each side of the driveway. The entire driveway shall have a 30-ton minimum rating for two-axle trucks including all bridges, culverts, cattle guards and all other constructs of the driveways.
- f. Solid waste shall be stored in an enclosed building or in animal proof containers and handled in a way that does not attract bears, rodents, flies, or other animals; generate odors perceptible beyond the property line or liquid runoff; or permit blowing of paper and other lightweight waste.
- g. Pets shall be controlled by each property owner, and not allowed to roam at large.
- h. Owners acknowledge that wildlife damage to landscaping and other property may occur. Owners shall accept the risk and shall not file claims against any governing body for such damages.

- i. Any fencing adjacent to agricultural lands shall be wildlife friendly, which the top wire or post shall be no more than 36 inches high, and bottom wire or post shall be at least 16 inches above ground.
  - j. Property owners of the subdivision are informed that nearby uses may be agricultural. Property owners accept and are aware that standard agricultural and farming practices can result in smoke, dust, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
  - k. Open Space Tract 1A and 2A shall perpetually remain in that use and be preserved and maintained for passive and active recreation, wildlife habitat, and protection of scenic, and unique or important natural features. No structures shall be constructed within Tract 1A and 2A.
  - l. Restrictive and Protective Covenants for the Subdivision shall be recorded among the records in the Office of the Clerk and Recorder of Gallatin County simultaneously with the filing of the final plat.
  - m. The covenants shall not automatically terminate.
  - n. Any covenant that is included herein as a condition of preliminary plat approval and required by the County Commission may not be amended or revoked without the mutual consent of the owners in accordance with the amendment procedures in these covenants and the governing body of Gallatin County.
19. A fully executed and notarized copy of the Restrictive and Protective Covenants for the Subdivision shall be recorded among the records in the Office of the Clerk and Recorder of Gallatin County simultaneously with the filing of the final plat.
20. The subdivider shall record a waiver of right to protest creation of rural improvement districts (RID) with the final plat. The RID may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder (76-3-608(7)) Mont. Code Ann..
21. A copy of the following documents, in one submittal, shall be submitted to the Gallatin County Attorney's Office, at least thirty (30) days prior to submitting an application for final plat approval to the County Planning Department. The subdivider shall provide a cover letter with the submittal explaining which documents are being submitted and including the name of the subdivision and the date of preliminary plat approval:



- c. Restrictive and Protective Covenants encumbering the real property contained within the subdivision. All County required covenants shall be in a separate section and clearly outlined.
- d. Any and all public easements, including roads and trails.
- e. Any and all improvements agreements along with: (i) itemized estimates of the cost of improvements to be included in the agreement certified by a licensed engineer; and (ii) drafts of the form of financial security.
- f. Any and all required maintenance agreements, including road maintenance agreements.

In addition, a copy of the Restrictive and Protective Covenants and any and all maintenance agreements must be submitted to the County Planning Department at the same time as submittal to the County Attorney's Office. Subdivider shall provide a cover letter to the Planning Department along with the submittal explaining which documents are being submitted and including the name of the subdivision and date of preliminary plat approval.

- 22. Two copies of the Certificate of a Licensed Title Abstractor shall be submitted along with a copy of the proposed Final Plat to the Gallatin County Attorney's Office at least thirty (30) days prior to submitting an application for final plat approval. The Gallatin County Attorney's Office shall review and approve the Certificate of a Licensed Title Abstractor prior to final plat approval.
- 23. Material alterations to any portion of an approved preliminary plat may require review by the Governing Body in a public hearing according to the process in the Gallatin County Subdivision Regulation for "Changes to Conditions after Approval." If material alterations *significantly* modify impacts of the proposed development, a new preliminary plat may be required. (Material alterations may include an increase or decrease in number of lots, modification to boundary lines, changes in the amount and location of lands dedicated to parks and open space, relocation or abandonment of public dedicated road rights-of-way, changes in the type and location of sewer and water facilities and easements, changes in the type and location of fire protection facilities, and any other alteration which stands to change the impact(s) posed by the development.)
- 24. The subdivider shall record on the final plat or on a separate document a certificate of consent of mortgagee(s) for the subdivision.

#### **General Statutory Requirements:**

- 25. The final plat shall conform to the uniform standards for final subdivision plats and shall be accompanied by the required certificates.

26. The subdivider shall have three (3) years from the date of preliminary plat approval to complete the above conditions and apply for final plat approval.

EXHIBITS:

- A. COS 2235
- B. Aerial Image of subject property
- C. Gallatin County Floodplain Administrator comments
- D. Gallatin County Water Resource Survey
- E. GCCHD Comments
- F. Hyalite Dam Inundation Map
- G. Gallatin County Road & Bridge Comments, January 20, 2012
- H. Gateway Rural Fire District Correspondence
- I. Open Space plan
- J. Public Comment
- K. Trout Unlimited comment
- L. Kughen Ditch Company comment

CC: Gallatin County Attorney  
Hadd Family Partnership, LLP, 11651 N. Vista Del Sol, Tucson, AZ 85742  
Ty Traxler, P.E., Confluence Consulting, Inc., PO Box 1133, Bozeman, MT 59771

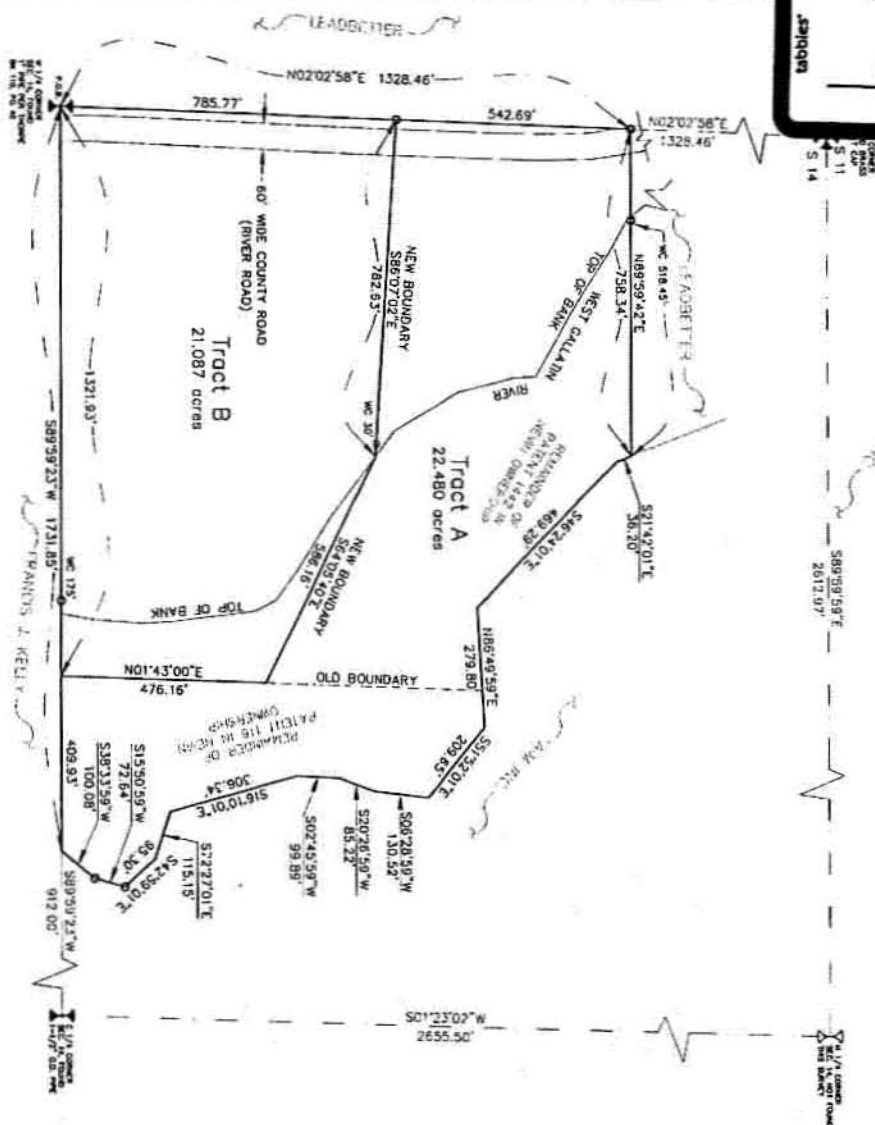
F:\PLNR\Tom\Subdivision\Major SDR\Hadd\CC\_SR\_4-10-12.doc

## EXHIBIT

A

# CERTIFICATE OF SURVEY No. 2235

LOCATED IN THE NW 1/4 OF S14, T2S, R4E, P.M.M., GALLATIN COUNTY, MONTANA



## NOTES:

DATE OF SURVEY: March, 2000  
 PURPOSE OF SURVEY: Common boundary relocation.  
 BASIS OF BEARING: The north-south midsection line of Section 14, bearing S01°23'02"W.  
 OWNERS OF RECORD: Robert A. and Dale Lynn Nash  
 SURVEYOR'S NOTE: Subject property corners that show no monument symbol fall in the bottom of the Gallatin River and are adequately referenced by monumentation that was set this survey.

WE WITNESS CORNER XX TO TRUE PROPERTY CORNER

O SET 5/8" x 24" REBAR WITH GRANGE PLASTIC CAP MARKED "ALBERT 5203 S"

## LEGEND

CERTIFICATE OF SURVEYOR  
 I, the undersigned, David M. Albert, Professional Land Surveyor, do hereby certify that between 2000 and 2001, I supervised the survey, plotting and description of the tract shown on the accompanying COS in accordance with the provisions of the Montana Subdivision and Plotting Act, M.C.A. 82-101 through 82-106, M.C.A., and the Gallatin County Subdivision Regulations.  
 DATED this 15 day of May, 2001.

David M. Albert, 5203 S



2036490

## CERTIFICATE OF SURVEY No. 2235

1/4 Sec T R

0 100 200 400  
 1 inch = 400 ft.

SEED ENGINEERING ASSOCIATES  
 Consulting Engineers & Land Surveyors  
 113 E. Third, Butte, MT 59718 523-9538  
 DATE: 03/02/00  
 REVISED: 05/04/00  
 SHEET NO. 1 OF 1

COUNTY: GALLATIN, MONTANA  
 PRINCIPAL MERIDIAN, MONTANA

### CERTIFICATE OF EXEMPTION

We, the undersigned property owners, do hereby certify that the purpose of this survey is to relocate common boundaries and that it is exempt from review as a subdivision under the Subdivision and Plotting Act pursuant to 78-3-207(1)(e) M.C.A.  
 DATED this 15 day of May, 2001.

Subscribed and sworn to before me this 15 day of May, 2001 by  
 Robert A. Nash  
 Dale Lynn Nash  
 Notary Public for the State of Montana  
 My Commission expires 11/1/07

### LEGAL DESCRIPTION

A tract of land located in the north-west quarter of Section 14, Township 2 South, Range 4 East, Principle Meridian, Montana, Gallatin County, Montana, being more particularly described as follows:

Beginning at the NW 1/4 corner of said section 14, thence N02°02'58"E 1328.46 ft., along west line of said section 14 to the NW 1/8 corner of said section 14; thence N80°59'42"E 758.34 ft., along the E-W 1/8 line of said section 14; thence S21°42'01"E 36.20 ft.; thence S48°24'01"E 469.29 ft.; thence N88°49'59"E 379.80 ft.; thence S51°52'01"E 200.65 ft.; thence S06°28'59"W 130.52 ft.; thence S20°28'59"W 85.22 ft.; thence S02°45'59"W 99.89 ft.; thence S16°10'01"E 308.34 ft.; thence S72°27'01"E 115.15 ft.; thence S42°59'01"E 95.50 ft.; thence S15°50'59"W 72.64 ft.; thence S38°33'59"W 100.08 ft.; thence S89°59'23"W 1231.85 ft., along the E-W midsection line of said section 14 to the point of beginning, containing 43.566 acres.

### CERTIFICATE OF USE OF EXEMPTION CLAIM

I, Chairperson of the Board of County Commissioners, do hereby certify that the use of the exemption claimed on the accompanying COS has been duly reviewed, and has been found to conform to the Subdivision and Plotting Act, Section 78-3-101(5)(e), M.C.A., and the Gallatin County Subdivision Regulations.  
 DATED this 15 day of May, 2001.

Chairperson, Board of County Commissioners

### CERTIFICATE OF COUNTY TREASURER

I, Treasurer of Gallatin County, Montana, do hereby certify that the accompanying COS has been duly examined and that all real property taxes and special assessments assessed and levied on the subject land have been paid.  
 DATED this 15 day of May, 2001.

Treasurer of Gallatin County  
 Deputy

### CERTIFICATE OF CLERK AND RECORDER

I, Shelly Vance, Clerk and Recorder of Gallatin County, Montana, do hereby certify that the foregoing instrument was filed in my office at 3:53 p.m. on this 15 day of May, 2001, and recorded in book COS for Plots on page 2235. Records of the County Clerk and Recorder, Gallatin County, Montana.  
 DATED this 15 day of May, 2001.

Shelly Vance, Clerk & Recorder, Gallatin County

Document # 2036490







## GALLATIN COUNTY

EXHIBIT

tabbies

C

### MEMO

**TO:** Tom Rogers, AICP, Planner, Gallatin County Department of Planning & Community Development

**FROM:** Sean O'Callaghan, CFM, Gallatin County Floodplain Administrator

**RE:** Flood Hazard Evaluation for Hadd Minor Subdivision

**DATE:** February 13, 2012

1. **Background.** On November 28, 2011, the Gallatin County Floodplain Administrator received an application from Ty Traxler, P.E., of Confluence Consulting, Inc, on behalf of Bob Hadd for a Flood Hazard Evaluation per Section 10.D of the Gallatin County Subdivision Regulations. Per the Floodplain Administrator's recommendation, the Flood Hazard Evaluation was revised and submitted with the Preliminary Plat Application.
2. **Summary.** The proposed Hadd Minor Subdivision is described as Tract A of COS #2235, located in the NW¼ of Section 14, Township Two South, Range Four East, P.M.M., Gallatin County, Montana. The proposed project is generally located approximately 0.35 miles south of Four Corners on the east side of River Road. The subject property is adjacent to the West Gallatin River. Except for the land located on the elevated bench at the western edge of the property, the rest of the property appears to be within the regulatory floodplain. Proposed Lot 1 contains an existing residence and accessory building, and proposed Lot 2 is intended for future development.
3. **Applicant's Proposed Mitigation:** The applicant has not proposed any specific mitigation; however the following requirements of Section 6.A.7 of the Subdivision Regulations apply.
  - a. *Land located within the 100-year Floodplain may be used for the following purposes:*
    - i. *Agriculture*
    - ii. *Open Space.*
    - iii. *Wildlife Habitat.*
    - iv. *Parkland.*
    - v. *Recreation.*

*new development activity (erection or placement of structures, placement of fill, topographic reconfiguration, etc.) on that Lot shall take place.*

- i. All structures built on such lots shall be designed and constructed so the lowest-floor elevation within the structure is at least two feet above the 100-year flood elevation.*
- ii. The required lowest-floor elevation for each building site shall be recorded on the plat or other applicable development document (final site plan, Covenants, etc.).*
- c. Subdivider shall demonstrate that safe access to the designated building site must be possible during the 100-year Flood.*
- d. Subdivisions should be designed to avoid placing Subdivision-related infrastructure (roads, bridges, utilities, etc.) within the boundaries of the 100-year Floodplain. Infrastructure that must be located in the 100-year Floodplain shall not adversely affect public health and safety or increase Flood hazards.*
  - i. Bridges constructed inside a Subdivision shall be designed so the lowest horizontal chord of the bridge is at least two-feet above the Base Flood elevation.*

**4. Floodplain Administrator's Comments:** The Gallatin County Floodplain Administrator provides the following comments on the submitted Flood Hazard Evaluation:

- a. The West Gallatin River is a very dynamic and unstable river system. The application provides documentation of this instability over a very brief period of time with aerial photographs. Work has been performed in recent years to stabilize the streambank on the west side of the River; however, channel migration remains a concern even though the proposed buildable lots are elevated above the 100-year flood elevation.
- b. As required by Section 6.A.7.a of the Subdivision Regulations, building envelopes are shown to restrict new development to land outside of the 100-year floodplain and in accordance with the 300-foot watercourse setback requirements of Section 6.A.5 of the Subdivision Regulations' leaving the balance of the property as open space.
- c. The application did not provide the information required by Section 6.A.7.b concerning lowest-floor elevations, thus that information will be required as a condition of approval.
- d. Access to the proposed subdivision is by River Road, a County maintained road that is outside of the floodplain. The most direct means of access would be to travel north on River Road to Norris Road, but, if for some reason River Road was compromised by flooding, the site could be accessed via several routes available to the south.
- e. It does not appear that any subdivision-related infrastructure will be located within the 100-year floodplain.

**5. Floodplain Administrator's Suggested Conditions of Approval:**

- a. In accordance with Section 6.A.7.b of the Subdivision Regulations, the covenants shall include the following language:

*All new structures built on Lot 1 & Lot 2 shall be designed and constructed so the lowest-floor elevation within the structure is at least two feet above the 100-year flood elevation.*

- b. The final plat shall delineate the 100-year floodplain boundary based on where the base-flood elevations intersect the ground.
- c. The required lowest-floor elevation for each building site shall be recorded on the plat or other applicable development document (final site plan, Covenants, etc.).
- d. The final plat shall include a note informing potential lot purchasers within the subdivision that even though the building sites are outside of the 100-year floodplain, the risk of channel migration persists.

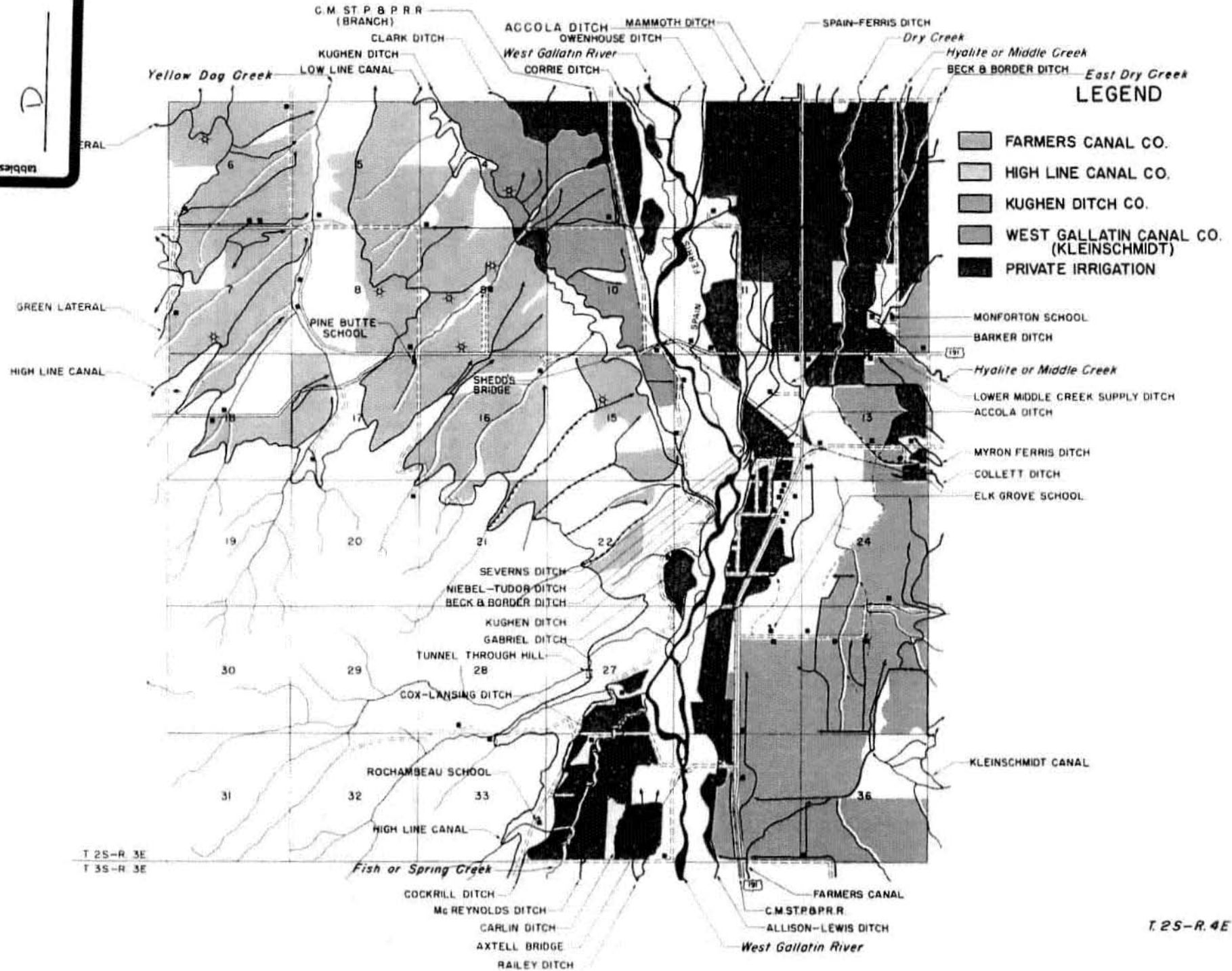
Please feel free to contact me at (582-3130) with any questions.

CC: Ty Traxler

EXHIBIT

D

Labels



# Gallatin County Survey Review Comment

Shared File No: 1183

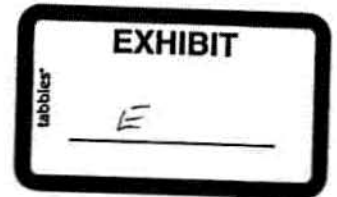
Document No:

Planning File No: S2012-025

CR File No:

Record Created: 11/15/2011 9:44:28 AM

CR Staff:



1/4 Section: NW

1/4 Section2:

Section: 14

Section2:

Township: 2S

Township2:

Range: 4E

Range2:

Other legal : Tract A of COS # 2235

Owner Name: Bob Hadd

Survey Type: Minor Sub

# Lots on survey: 2

Plat Title:

Purpose: Subdivide an existing 22.48 tract into two lots.

Action Date: 11/22/2011

Planning Staff: Rogers

PlanningComments:

Date Checked: 02/07/2012

EHS Staff: Moldroski

EHS Comments:

2/7/2012 Tract A of COS 2235 being split, creating Lot 1 (3.372 ac), Lot OS 1A (0.842 ac) , Lot 2 (1.953 ac) & Lot OS 2A (0.488 ac). Survey also shows existing tracts Tract A (2.882 ac) and Tract B (2.284 ac). The existing tracts are not subject to Sanitation Act review. The two Open Space tracts (OS 1A & OS 2A) are subject to review unless a suitable exemption is placed on the survey. If the intent is to keep OS Tracts 1A & 2A undeveloped (and assuming they are currently undeveloped), then exemption ARM 17.36.605(2)(a) would be appropriate.

Lot 1 contains the existing development which consists on a 4-bedroom home and a 2-bedroom guest house. These 2 structures are sharing septic system # 10333 which was issued in 2000 for a 2-bedroom house plus a 2-bedroom guest quarters/barn. The addition of 2 extra bedrooms has invalidated the septic permit. This system will have to come into



## Gallatin County Survey Review Comment

compliance by obtaining a new permit and constructing the upgraded system prior to any local health department approval of the subdivision. This tract will need to go through Sanitation Act review after the system has been upgraded.

Lot 2 is currently vacant and is proposed to contain one single family dwelling with onsite water and sewer systems. This tract will need to go through Sanitation Act review.

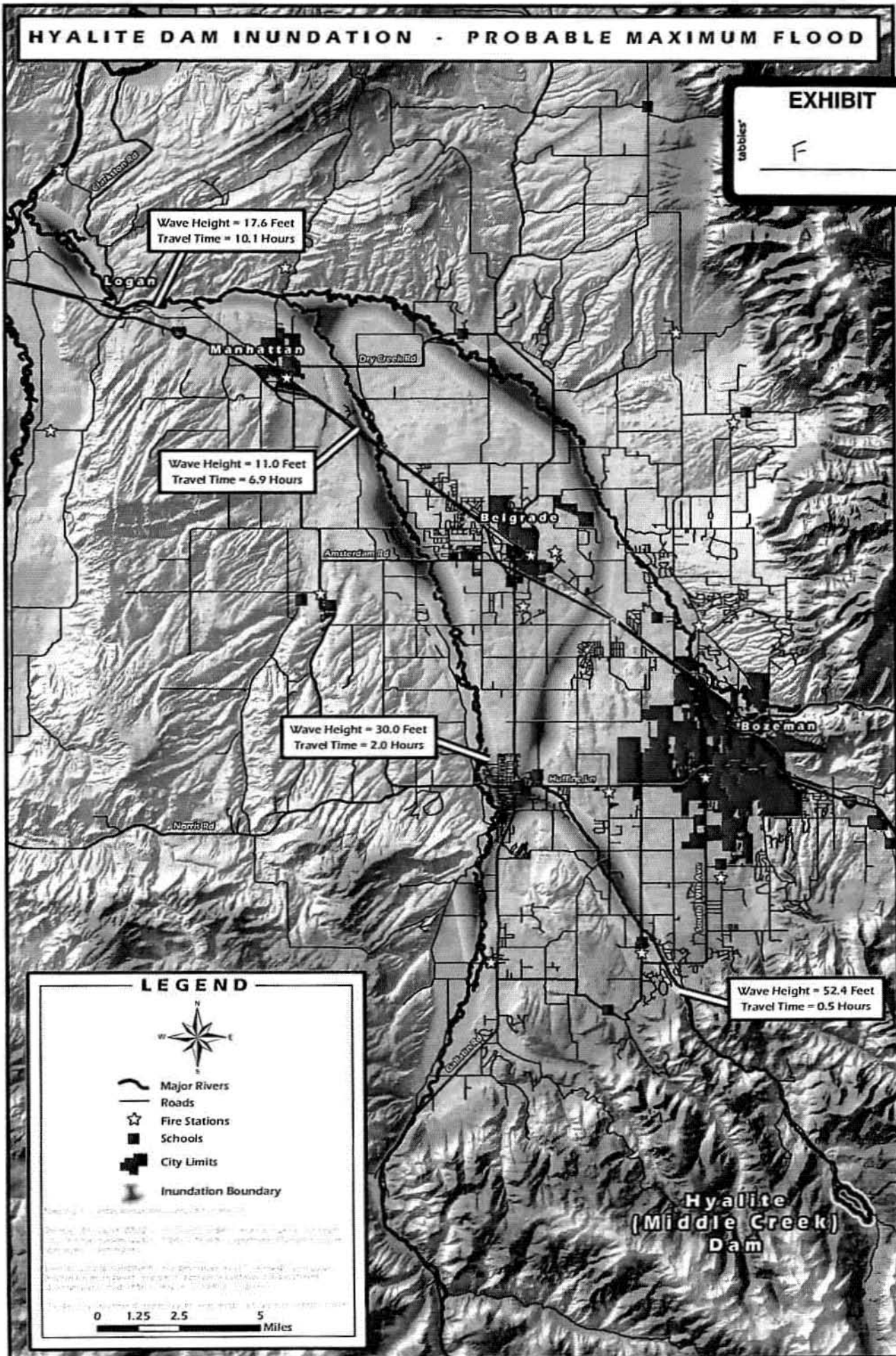
(Note: earlier EHS comments were based on the wrong survey and so they have been erased). (dlm)

# HYALITE DAM INUNDATION - PROBABLE MAXIMUM FLOOD

EXHIBIT

tables

F





January 20, 2012

# Gallatin County, Montana

## Road, Bridge, & Junk Vehicle Departments

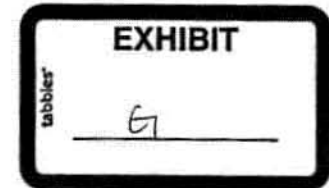
205 Baxter Lane West; Bozeman, MT 59718

Phone: (406) 582-3250

Fax: (406) 582-3255

www.gallatin.mt.gov

Gallatin County Planning  
Gallatin County Courthouse  
311 W. Main  
Bozeman, MT 59715



ATTENTION: Mr. Rogers, Neighborhood Planner

Re: Hadd Subsequent MiSub Preliminary Plat

After review of the foregoing subdivision, I provide you with the following comments:

Encroachment permit(s) must be obtained from the county road office for any access points coming off of county maintained roads.

A "no access" strip is required along all lot boundaries that border county maintained roads, with the exception of approved driveway encroachments.

Subdivision applicants should be advised that Gallatin County is currently in the process of revising its impact fee policies. In the past, impact fees have been a condition of preliminary plat approval, due at time of final plat submittal. The new policy to be adopted in the near future anticipates charging impact fees at the time of construction on individual lots. It is the landowner's responsibility to determine if an impact fee is required.

Sixty (60) feet of River Road along the entire western boundary of the subdivision shall be dedicated to the public for the entire length of the development.

A waiver of right to protest the creation of future RIDs shall be required.

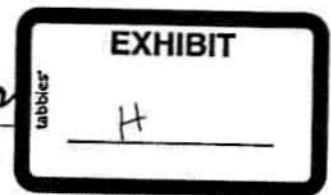
Sincerely,

George Durkin  
County Engineer



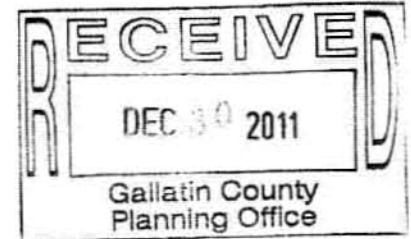
## Gallatin Gateway Rural Fire District

P.O. Box 238 • 320 Webb Street • Gallatin Gateway, MT 59730  
Phone (406) 763-4318 • 763-4318



December 28, 2011

Gallatin County Planning Department  
Attn: Tom Rogers  
311 West Main #108  
Bozeman, MT 59715



### RE: Hadd Subsequent Minor Subdivision

The Gallatin Gateway Rural Fire District has reviewed the proposal for the Hadd Subsequent Minor Subdivision. Per Gallatin County Subdivision Regulations the following sections shall apply:

#### APPENDIX I: FIRE PROTECTION PACKAGES

**1. General Fire Protection Requirements.** All of the fire protection requirements in this Appendix apply to all subdivisions.

1.1 Where review or approval of any fire protection requirement is to be performed by the Fire Protection Authority Having Jurisdiction (FPAHJ), another qualified authority or expert, approved by the FPAHJ, may provide such review or approval at the expense of the subdivider/property owner.

1.2 Access to and from and within the subdivision – All roads shall meet or exceed Gallatin County road standards, including but not limited to construction, width and grade. The access routes shall be approved by the FPAHJ.

1.3 The FPAHJ may require a particular fire protection plan (fill sites, tanks, sprinklers, etc.). The FPAHJ may also require additional fire protection features depending on the subdivision fire protection requirements.

1.4 Use of Existing Fire Protection Water Supply Features – Credit for the use of existing fire protection water supply features may be considered by the FPAHJ provided the feature meets the current applicable Gallatin County Fire Council fire protection standards and be approved by the FPAHJ. A written plan shall be provided to and approved by the FPAHJ providing for funding, use, maintenance and future upgrades of the feature. If the proposed plan requires any cooperative agreements, or actions, between the subdivider/property owner and any other party, those shall be completed prior to the proposed plan being accepted by the FPAHJ. This includes but is not limited to contracts, joint ownership, etc. The subdivider/property owner shall provide, at their expense, current performance test data for the fire suppression water supply system based on current field measures, certified in writing by a professional engineer licensed in Montana. The subdivider/property owner shall provide detailed descriptions and specifications and drawings of the as-built construction and water supply system components of the pond, water main system, pump, and hydrant(s) to the FPAHJ. The FPAHJ may require the

subdivider/property owner to pay for an independent validation review of the fire protection water system by a Professional Engineer ("P.E.") licensed in Montana and approved by the FPAHJ.

1.5 Any structure over 3,600 square feet or with a building height greater than 35 feet shall be subject to additional requirements for fire protection water supplies (amount, delivery rate, and location) as described according to the construction and square footage of the structure in the current edition of Fire Code adopted by the State of Montana. The FPAHJ may accept the installation of an approved fire protection sprinkler system meeting the current, applicable National Fire Protection Association (NFPA) standard in place of, and equivalent to, the additional fire protection water supply requirement specified in this Appendix. APPENDIX I – FIRE PROTECTION PACKAGES 1-2

1.6 Fire Protection Covenants – All covenants required to meet the fire protection requirements shall be recorded with the subdivision final plat. Any amendment to the fire protection covenants must be approved by the County Commission and the FPAHJ. The FPAHJ is granted standing in the covenants of the subdivision for the purpose of enforcing all fire protection requirements. A fire protection note, calling attention to the fire protection requirements shall be placed on the final subdivision plat. The following covenants may, at the discretion of the FPAHJ, be included as a requirement of the fire protection plan to mitigate potential threats from fire. This list is not all inclusive:

a. Maintenance of Fire Protection Water Supply Features and Fire Department Use (i.e., open water fill sites, buried water tanks) – Fire protection features must be maintained to their original performance capability in perpetuity by, and at the expense of, the property owners. Performance of all fire protection features shall be certified annually, by the use of field measures, by the FPAHJ or by a PE licensed in Montana. If a PE is to be used, a report shall be submitted, in writing, to the FPAHJ to ensure continued specified capability. The annual certification by the PE shall be at the expense of the property owners. The PE shall be approved by the FPAHJ. The fire department shall have unrestricted use, in perpetuity (at no cost to the fire department) of the fire protection features including but not limited to water sources, pumps, and hydrants.

b. Separation Between Buildings on the Same Lot – The separation between all structures protected by approved fire sprinkler systems and all detached, non-sprinkler protected structures, including accessory buildings, shall be a minimum of 50 feet.

c. Driveways to Structures – To allow for emergency vehicle access to structures, the property owner shall provide a driveway meeting the following requirements as approved by the FPAHJ: a minimum unobstructed driving surface of 12 feet for driveways less than 300 feet long and a 16 foot driving surface for any driveway over 300 feet long; a vertical clearance of 15 feet; and a four foot zone of reduced vegetation on each side of the driving surface. If a driveway that is less than 16 feet wide is approved by the FPAHJ, turnouts shall be designed and constructed every 300 feet along the driveway's length.

(i.) For all buildings or structure sites on driveways over 300 feet in length, the property owner shall provide a turnaround including but not limited to a drive-through, cul-de-sac or hammerhead turn-a-round.

A turnaround shall be within 50 feet of the building or structure when there is no community water system with fire hydrants.



A turnaround shall be within 150 feet when there is a community water system with fire hydrants.

(ii.) All gates, bridges, culverts, cattle guards and all related constructs affecting access shall be a minimum of two feet wider on each side of the driveway. The entire driveway shall have a 30-ton minimum rating for two-axle trucks including all bridges, culverts, cattle guards and all other constructs of the driveways.

**1.7 Alternative Fire Protection Features or Systems** – Alternative fire protection technologies, means, features or systems may be approved by the FPAHJ where they provide fire protection equivalent to or greater than required in this Appendix.

**1.8 Addressing Posted** – Addressing on the building shall be contrasting on the building and reflective on the street. Number size shall be four-inch (4") minimum height. Sign numbers and the background shall be made of retro-reflective material. Address signs shall meet the requirements of the FPAHJ.

**1.9 Fire Apparatus Access** – Fire apparatus shall be able to park on a roadway, driveway, or fire apparatus parking area within 150 feet of all parts of the exterior of the building. The roadway, driveway, or fire apparatus parking area shall be engineered and constructed to safely support a 30-ton, two-axle fire apparatus.

**1.10 Mapping** – A map or electronic file, in the format approved by the FPAHJ, of the subdivision shall be provided to the FPAHJ indicating streets, addresses, street names, fire protection features, lot lines, building envelopes, utilities, easements, etc.

**1.11 Fire Protection Water Supply Feature Standards** – All fire protection water supply features shall meet or exceed the appropriate fire protection standard adopted by the Gallatin County Fire Council, which are based on the current edition of the Fire Code, as adopted by the State of Montana.

**1.12 Travel Routes to Fire Protection Water Supply Features** – Travel routes to fire protection water supply features shall be approved by the FPAHJ.

**1.13 Fire Protection Sprinkler/Fire Alarm System Project Tracking Process** – Fire protection sprinkler/fire alarm project tracking process may be required, by the FPAHJ, where a structure has a fire protection sprinkler system installed as a part of a subdivision fire protection plan. The tracking process may be administered by the FPAHJ. The tracking process requirements are as follows:

a. The property owner shall provide 14-day written notice of intent to build a structure with fire protection sprinkler system, and where applicable, fire alarm system, engineered by a PE. A plans review fee will be paid by the subdivider/owner to the FPAHJ. A fee schedule shall be determined by the FPAHJ. In lieu of a plans review fee and at the discretion of the FPAHJ, the FPAHJ may require a third-party review (selected by the FPAHJ) of the plans at the expense of the subdivider/property owner.

b. The property owner shall provide written certification by a PE that the fire protection sprinkler system and, where applicable, fire alarm system, are installed and fully operational prior to enclosure with sheet rock or interior wall covering installation. The FPAHJ shall be permitted to witness the testing with a minimum of 48 hours advanced notice.

c. The subdivider or property owner shall provide written certification, to the FPAHJ, by a PE and the subdivider or property owner that all fire protection requirements have been met prior to final occupancy. The FPAHJ shall be permitted to witness the checklist inspections required in this section. The subdivider or property owner shall provide the FPAHJ with 48 hours notice of the checklist inspections.

d. Occupancy shall be permitted only when all fire protection requirements have been met as determined by the FPAHJ.

#### 1.14 Back-Up-Power Requirements for Water Distribution Systems Providing Fire Protection Water Supply:

a. Back-up power is required for water distribution systems supplying a fire hydrants or fire sprinkler systems for the wells and/or pumps if there are not any storage tanks or ponds as part of the system. The subdivider/property owner shall provide, at their expense, a backup power supply and automatic transfer switching system for the fire protection water supply system that supplies the fire sprinkler systems in the buildings and hydrants. The backup power supply system shall be engineered by a P.E. licensed in Montana. The P.E. designing back up power system shall certify in writing that the backup power supply system will be capable for the duration of the capacity of the water supply. Documentation of the proposed back up power supply system shall be provided to the FPAHJ 30 days prior to final plat approval. The backup power system design documentation shall include certification of the system capacity and design by signature of the P.E. licensed in Montana. Prior to installation, the backup power sources and automatic transfer switching systems shall meet the requirements of, and be approved by, the FPAHJ. The subdivider may be required to pay for an independent validation review of the fire protection water system back up power system they propose to the FPAHJ by a P.E. licensed in Montana and selected by the FPAHJ.

b. Back-up power, meeting the requirements of Section 1.14(a) of Appendix I, or a draft connection, meeting requirements of the FPAHJ, is required for water distribution systems supplying fire hydrants, or fire sprinkler systems for the wells and/or pumps if there are storage tanks or ponds as part of the system.

1.15 Subdivisions with mixed residential and commercial use or buildings shall have fire protection requirements using portions (residential, commercial, etc.) of these fire protection requirements that addresses the use (residential, commercial, etc.) for the subdivision.

1.16 A Vegetation Management Plan is required for all subdivisions that have any Common Space, Open Space or Parkland. See Section 7.1(d) of Appendix I.

**4. Fire Protection Requirements for One Lot Minor Residential Subdivisions.** For a one (1) lot minor residential subdivision, the subdivider/property owner shall provide one of the following fire protection packages:

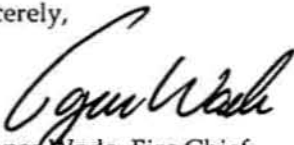
4.1 An underground tank or pond of 10,000 gallons capable of delivering 1,000-gallons-per-minute from an approved fire hydrant with a maximum approved travel distance from the furthest lot line to the hydrant of 1,000 feet; or

4.2 Installation in every residential or combination use structure a fire protection sprinkler system. The Fire Sprinkler System shall be connected to a public water supply, if available and the system shall be engineered by a licensed P.E., installed and fully operational and compliant with the current edition of the applicable NFPA standard.

Confluence Consulting Inc. has indicated that the subdivision intends to use fire protection sprinkler systems in all residential or combination use structures. **It is critically important that this requirement be clearly indicated on the final plat, and that the Gallatin Gateway Rural Fire District be supplied a copy of the final plat.**

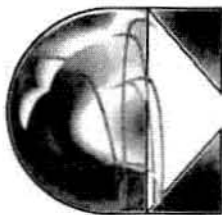
If you have any further questions concerning these requirements please feel free to contact me at 763-4318, or [cwade@gallatingatewayfire.com](mailto:cwade@gallatingatewayfire.com)

Sincerely,

A handwritten signature in black ink, appearing to read "Cooper Wade", written in a cursive style.

Cooper Wade, Fire Chief

cc: Ty Traxler, P.E. Confluence Consulting Inc.



**CONFLUENCE**  
consulting incorporated



February 16, 2012

Gallatin County Planning Department  
Attn: Tom Rogers  
Gallatin County Courthouse  
311 West Main St. Room #108  
Bozeman, MT 59715

**RE: Open Space Lots for the Proposed Hadd 2 Lot Minor Subdivision: Tract A, COS #2235 Located in the NW 1/4 S14, T02S, R04E P.M.M.**

Tom,

In regards to the above referenced project, the applicant proposes Open Space Lots OS-1A and OS-2A in accordance with the requirements of 9.3.4.A of the Four Corners Zoning Regulations. In addition, the applicant is proposing that each Open Space Lot be designated as "an individual Parcel owned by an individual Lot owner or other third party, dedicated as permanent Open Space on the plat" as allowed in Section 9.3.4.B.iv of the Four Corners Zoning Regulations.

As we have discussed previously, it is the applicant's intent that the Open Space Lots OS-1A and OS-2A will be owned and maintained by the respective owners of Lots 1 and 2. Furthermore, the applicant proposes to include the following note on the final plat in order to provide the intended restrictions on the conveyance of the Lots:

*Conveyance of Lot 1 or Lot 2 shall include the respective Open Space Lots OS-1A or OS-2A. Open Space Lots OS-1A and OS-2A shall not be conveyed independent of respective Lots 1 and 2.*

As always, if you have any questions or require any further information, please give me a call.

Thank you very much.

Ty Traxler, P.E.  
Project Engineer

cc. File

**GSA** Contract Holder

406-585-9500  
fax 406-582-9142

P.O. Box 1133  
1115 N. 7<sup>th</sup> Ave, Suite 1  
Bozeman, MT 59771-1133

[www.confluenceinc.com](http://www.confluenceinc.com)

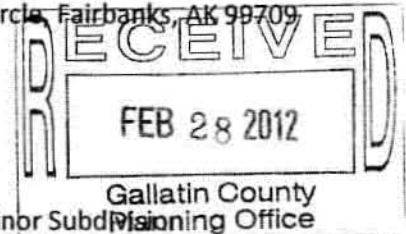
February 27, 2012

Gallatin County Planning Department  
Attn: Mr. Tom Rogers  
311 West Main Street Room 108  
Bozeman, MT 59718

10474 River Road, Bozeman, MT. 59718

4701 Harvard Circle, Fairbanks, AK 99709

RE: The Hadd Subsequent Minor Subdivision



Dear Mr. Rogers and Planning Board Members:

I am contacting all of you today on behalf of myself and my parents, Francis and Deloris Kelly. Together we own neighboring property to the south of the Hadd lands that include lands at 10170, 10474 and 11374 River Road. The Kelly Ranch has been in our family for more than 40 years, extends for about 2 miles south along the west side of the Gallatin River and is all agricultural and open space land. It is also under conservation easement agreements so that it will remain as it is now, open space, wildlife and natural river habitat and agricultural use only. I am also writing as a founding member of AGAI (The Association of Gallatin Agricultural Irrigators) whose mission is to be "The advocate and guardian of the Gallatin River system and its historically decreed water rights".

The Kellys are not AGAINST the Hadd Family personally in any way, but we are FOR the protection and good stewardship of the Gallatin River and for the enhancement and protection of open space, wildlife and river habitat and the continued use of the neighborhood as primarily agricultural and open space lands.

The proposed "minor subdivision" may be done and accomplished all within compliance or purported compliance with the various rules and regulations which permit it, but we do not believe that its impact is minor in the larger scope of the River ecosystem. The decision to subdivide and to allow such a subdivision should not always be "only about the money". From an ecological perspective, an approval is indefensible. Why not choose to adhere to the stated purposes, vision and spirit of the Four Corners Community Plan Vision Statement and the Four Corners Zoning Regulations?

I draw your attention to the first page of the Four Corners Community Plan entitled "Vision Statement" a copy of which is attached hereto and highlighted. I do the same with the Four Corners Zoning Regulations, specifically page Section 3, item 3.1 also attached and highlighted. These statements are the community sensibility about this neighborhood. We do not believe that this minor subdivision adheres to the goals and purposes of the plans or the intent to support open space and agriculture.

The project does not appear to enhance the neighborhood by adding another, presumably large residence on a small lot and very close to the road. It can't possibly enhance the value of the existing residence at 9704 River Road by putting another house in such close proximity and fully in view of the 9704 house, lessening privacy and overall property value. Is it really necessary to create another lot when we have already a more than 10 year supply of lots in the valley of all kinds to satisfy the needs of development?

The proposed Lot 2 is only 170 feet wide and appears to have a usable depth of roughly 100 feet on the north and perhaps as much as 170 feet on the south creating a space in which building could be done that would be outside of the 100 year floodplain. The remainder of the land is all in the 100 year floodplain or the floodway (which is most of the lot). That is a small area on which to build a residence and put in well and septic systems that will be compliant with various regulations.



When one examines the covenants and restrictions put in place by the original subdivider and recorded August 9, 1999 in Book 201 at Page 2750 through 2759, you will note the requirement under 2C, the minimum size of a new single family residence is 1500 square feet exclusive of garage and the allowance of a single family "guest house" not bigger than 1500 square feet or smaller than 500 square feet. These "minimums" will eat up a lot of the usable square footage and along with well and septic system requirements and setbacks make for a very tightly packed lot, if in fact such a project is achievable. It perhaps bears noting that the septic system on the adjacent property directly to the south at 9780 River Road, which is a total of 21.087 acres has a large mounded drain field system close to River Road. Is there really enough room for the proposed use of this lot?

Additionally, the current home at 9704 River Road is located in the same or very nearly the same spot as the original Hoversland homestead house that was a 100 years old more or less when torn down about the year 2000 by the original subdivider Robert Nevin and Dale Lynn Nevin. Historically, the entire Hoversland homestead was about 131 acres and was all sheep farm and other agricultural uses. I believe the home at 9704 River Road is located where it is, due to "grandfathering" and allowing a new structure to be built where the old one was for so many years, whether it made sense to do so or not.

We are very concerned about flooding issues on the Gallatin River. Regardless of the location of the 100 year flood plain, I'm confident that were it NOT for the cold, delayed spring in 2011 and the slow snow melt from the overabundant snow in the mountains; the Gallatin River would have massively flooded, well above the 100 year flood plain line and we would have experienced the kind of devastation that other parts of the state did not escape from. The river is wild and unpredictable; who is to say that another very heavy snow season combined with a hot spring and early summer would not cause a catastrophic flood? One can look very nearby to see the effects of the high water and the power of the River. 2/10ths of a mile north of Shedd's bridge and roughly 1/2 mile north of the proposed lot is the Shedd's Bridge public river access. It's closed to use due to the strong avulsion of the River on the bank leaving a steep, eroding cliff that is unusable to access the river and considerable ground was lost. The McManus family just on the north side of the bridge has had bank damage and applied for permits to do expense work to protect their lands and home from the action of the River.

If one looks around and sees the location of the oldest homes in the area, for the most part, they are well away from the edge of the River. The "pioneers" were wiser that we are now in they located their homes not on the banks of the River but farther back and on higher ground. We could all take a lesson from their practices.

Additionally, the River at this location adjacent to both sides of Shedd's Bridge is highly congested, heavily used by fishermen, other water recreationists and folks just wanting to contemplate, all accessing the river to the south of the bridge (since the public access to the north is closed) making the River more stressed with people in it, trampling the banks, fishing, leaving trash (sadly) etc. every day of the year. Why should we put more pressure on an already highly stressed part of the River?

The staff report on Page 6 under "Wildlife" discusses the proximity of Jackrabbit Lane (more than a mile away) and oddly, Baxter Lane (more than 3 miles away) as being the primary major roads which impact the area. In truth, the primary major road is Norris Road 1/3 of a mile to the north. The fact stated that the main roads present a hazard for wildlife is fairly obvious. Why then do we want to encourage more development in areas that should be left alone for nature? The only access to the proposed Lot is off River Road from Norris Road OR by travelling north on River Road from Axtell Anceny Road and for about 3 miles or more until you reach the property. River Road from Norris Road south to Axtell Anceny is a dirt/gravel road that is very rough and nearly impassable when wet in its southern reach. I bring this to your attention so as to correct the record.

Additionally, the report in this same section, states that "although incidental wildlife is present and the property is capable of supporting various species of wildlife the impact the subdivision will have is negligible". The Kellys do not agree with this statement at all and believe that additional and more dense housing very negatively impacts wildlife habitat and intrudes on the space that nature uses as its home.

In the past year I have seen the following on our lands just to the south:

Black bear, Mountain Lion, Bobcat, Fox, many deer, beaver, wooly marmots, porcupine, rabbits, mallard ducks and other ducks numbering in the hundreds, geese, pheasants, Bald and Golden eagles, Sand Hill Cranes, weasel, hawks and songbirds of many kinds. My next door neighbors have seen coyote and chased two wolves out of their calves in January. I saw a large female moose on the other side of the hill in December. The wildlife use the Gallatin River corridor as their highway and the dense trees and vegetation as their hiding and nesting, breeding and feeding places. These animals, not to mention all the fish and other aquatic species ARE impacted by every new house, by more people, more traffic and by more destruction of their habitat and safe places. To deny that or minimize it, is irresponsible.

The report goes on under "Wildlife Habitat" to make conjecture as to the "anticipated future land use of the area amongst other "mitigating" factors and to imply that the suggested conditions of approval would mitigate impacts on wildlife and therefore "based on the aforementioned there is minimal impacts on wildlife". We disagree, and would argue the opposite is true. More development equals more impact, more decimation of the River corridor and more pressure on agriculture and nature; all to the detriment of the natural character of the area.

The suggested conditions of approval to protect wildlife under 21 g,h,l and j are weak and ineffective and have very little to do with wildlife protection.

The vast majority of the land in the general area to the west and the south and north is agricultural and open space. Our ranch stretching from ¼ mile south of Norris Road on River Road to about 3 miles South is all protected by conservation easements and will never be developed. That's about 2 plus miles of the River, all protected. Others may follow suit. To imply that it's all going to be subdivided anyway and take a defeatist, inevitable kind of attitude is wrong. There are a few houses near the River Road/Norris Road intersections, most of which have been there for many years and predate any kind of regulation. Now that we have some framework in which to make good decisions about our lands, let's use it.

We cannot do much about the east side of the Gallatin River with the Rainbow Subdivision originally subdivided in 1913 and a mess ever since; other than to try to mitigate it's impacts on the Gallatin. But, we can choose to make a concerted effort to protect the west side of the River and to support family farms, local food and protect the wonderful resource and source of life and clean water that we have, the Gallatin River. As members of the agricultural community and conservators of water, wildlife habitat and our collective heritage in the valley; the Kellys are asking the Planning Department and the County Commissioners to think bigger than this one so called "minor" subdivision. To seriously consider the real impact and consequences that approval of this subdivision, the development of another lot along the river and the cumulative effect of the lots approved before it and ones yet to be proposed will have on this most precious resource we have, the Gallatin River system.

Once it's gone, it's gone forever. Please be good stewards of what's left of our natural resources and agricultural heritage and vote NO on this subdivision.

Respectfully Submitted,



Kathryn L. Kelly, individually and on behalf of Francis J. Kelly and Deloris L. Kelly and the Kelly Trust

# **FOUR CORNERS COMMUNITY PLAN**

## **VISION STATEMENT**

(As Adopted 4/11/6)

---

Four Corners is a community of diverse neighborhoods and a variety of uses mixed with rural development and agricultural production, all situated within a potentially fragile environment.

The community:

- Supports new development that is compatible with and preserves the natural and historical environment, including water resources, and protects existing neighborhoods and uses within the community.
- Manages growth to reinforce the agrarian rural/small town character of the area that includes agriculture, open space, and trails as important elements of the Four Corners community's economic, cultural and social structure.
- Supports the provision of adequate public services by new development without compromising existing levels of service or burdening existing residents with the costs of growth. Adequate public services shall be provided as the needs for such services occur.
- Seeks to balance protection of private property rights with the property rights of others.
- Proactively protects the natural and social environment from degradation by existing and future development.

## **SECTION 3 RURAL RESIDENTIAL AND AGRICULTURAL SUB-DISTRICT (RR/A)**

### **3.1 Purpose.**

This chapter establishes the Rural Residential and Agricultural Sub-District and standards specifically applicable within the Sub-District. The purpose of the Rural Residential and Agricultural Sub-District is to promote and preserve continued agricultural and rural Residential use of property, including waterways, Open Space, trails, and wildlife corridors as important elements of the Four Corners community. For the purpose of § 76-2-209, MCA, the RR/A Rural Residential and Agricultural Sub-District is determined to be Residential in nature.

### **3.2 Uses Allowed By Right.**

Uses allowed by right in the RR/A Zoning Sub-District are listed below. With the exception of Agriculture and Agriculture-related Structures, any new construction associated with Principal Uses requires an administrative land use permit from the Planning Department prior to any construction. See Section 2.3 for the permitting process.

<b>Use</b>	<b>Comments</b>
Agriculture and agricultural activity	Includes associated Structures and employee housing.
Day Care, Family	
Essential Services, Type I	
Home Occupations	See Development Standards in Section 9.2.7
Mobile Home Parks	
Religious Organizations and Places of Worship	
Residential	Includes single-family residences up to and including four-plexes (including Apartments), Accessory Uses, Guesthouses, and Caretakers Residences. Accessory Dwelling Units shall not exceed more than two.
Riding Stables	Including Commercial Equestrian Facilities
Schools	
Wind or Solar Towers	

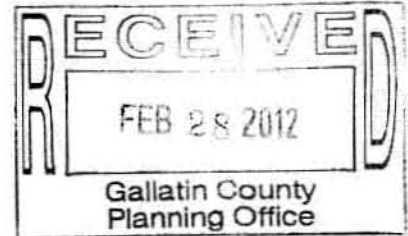
### **3.3 Conditional Uses.**

Conditional uses allowed in the RR/A Zoning District are listed below and will require a CUP pursuant to Section 2.4 prior to commencement.

Supplement to Letter dated February 27, 2012 to Gallatin County Planning Dept. and Tom Rogers

From: Kathryn L. Kelly/Kelly Family and Kelly Trust

Re: Hadd Subsequent Minor Subdivision



Dear Sirs,

As part of my research of the public records on this matter, I found the attached easement for a "dewatering well" that is located on Tract B (next door) and is for the benefit of Tract A, which is the Hadd property. Originally Tract A and B were owned by Robert Nevin and Dale Lynn Nevin and they created this dewatering well easement. The well appears to be about 35 feet south of the southerly property line of the proposed new lot to be created.

I believe this matter needs to be investigated in light of the use and purpose for a dewatering well, the high water table, very close proximity of the Gallatin River and 100 year flood plain.

An examination of the DNRC water right records did not yield a registered water right for this well, but two water rights registered to the Hadd family for a pond (behind the home at 9704 River Road and a well located on what appears to be the northerly boundary of their land.

I have attached a copy of this easement deed for your review and use, along with the water right documentation found.

Thank you for your attention to this matter in light of all the other information and facts.

A handwritten signature in cursive script, followed by the date "2/28/12" written in a similar style.

Kathryn L. Kelly, individually and on behalf of Francis J. Kelly, Deloris L. Kelly and the Kelly Trust.



GRANT OF EASEMENT FOR DEWATERING WELL

COMES NOW, ROBERT A. NEVIN and DALE LYNN NEVIN and hereby grant an easement for a dewatering well located on the following described real property owned by them in Gallatin County, Montana, to-wit:

Tract B of Certificate of Survey No. 2235, located in the NW $\frac{1}{4}$  of Section 14, Township 2 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

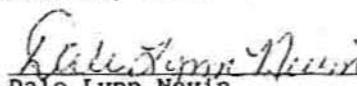
Said grant of easement shall be for the benefit of the owners of the following described real property in Gallatin County, Montana, to-wit:

Tract A of Certificate of Survey No. 2235, located in the NW $\frac{1}{4}$  of Section 14, Township 2 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Said grant of easement shall be for the dewatering well, the underground electric wire servicing the well and the pipeline to the pond, all as shown and depicted on attached Exhibit "A". This grant of easement shall include the right to repair, maintain and replace the wiring, well and pipe, and grantees shall restore the property to its condition prior to any repair or maintenance. This grant of easement shall be perpetual, shall run with the land, and shall bind the heirs, successors and assigns of the grantors herein.

Dated this 16 day of November, 2001.

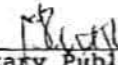
  
Robert A. Nevin

  
Dale Lynn Nevin

STATE OF MONTANA     )  
                                  : ss.  
County of Gallatin    )

On this 16 day of November, 2001, before me, a Notary Public in and for said State, personally appeared ROBERT A. NEVIN and DALE LYNN NEVIN, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

Gail D. Huls  
Notary public for the State of Montana  
Residing at Bozeman, Montana  
My Commission Expires July 29, 2002

  
Notary Public for the State of Montana.  
Residing at Bozeman, Montana.  
My commission expires: 7/29/2002



2053327

Page: 1 of 2  
11/16/2001 03:30P

Shelley Vance-Gallatin Co MT MISC

12.00

ALIC 1-67908-BW

Shelley Varnes-Gallatin Co MT MISC  
 11/16/2001 03:30P  
 Page: 2 of 2  
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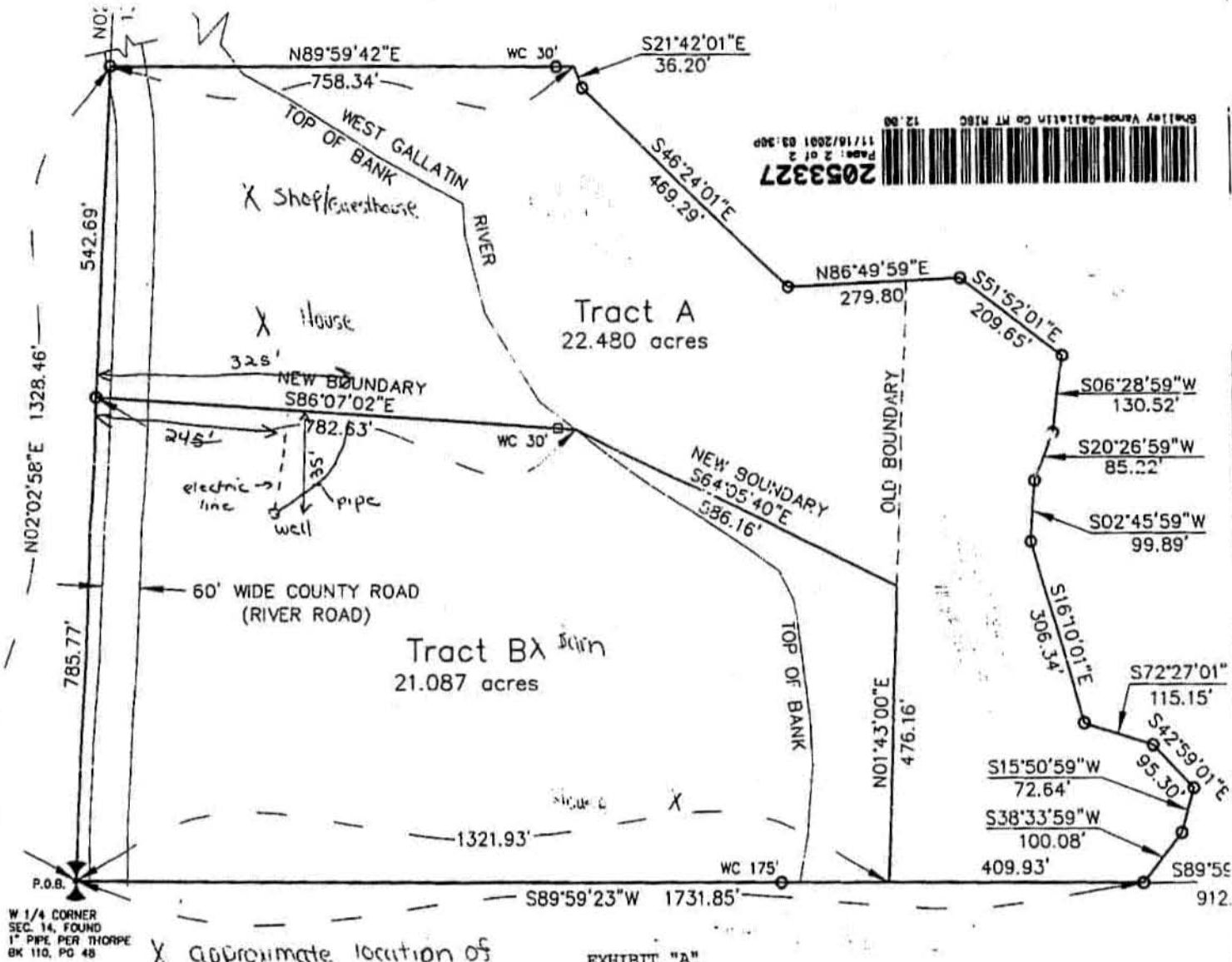


EXHIBIT "A"

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

## GENERAL ABSTRACT

Water Right Number: 41H 30015345 GROUND WATER CERTIFICATE  
Version: -- ORIGINAL RIGHT  
Version Status: ACTIVE

Owners: BOB HADD  
3567 E SUNRISE DR, STE 219  
TUCSON, AZ 85718 3232

Priority Date: May 31, 2005 at 9:34 AM  
Enforceable Priority Date: May 31, 2005 at 9:34 AM

Purpose (use): FISH AND WILDLIFE

Maximum Volume: THIS RIGHT IS LIMITED TO THE ACTUAL AMOUNT USED UP TO 10 ACRE-FEET

Source Name:  PIT  
Source Type: GROUNDWATER

Points of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNW	14	2S	4E	GALLATIN

Period of Diversion: JANUARY 1 to DECEMBER 31  
Diversion Means: DAM/PIT

Reservoir: OFF STREAM Reservoir Name:  


<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNW	14	2S	4E	GALLATIN

Depth: 13.00 FEET  
Surface Area: 0.32 ACRES  
Current Capacity: 1.67 ACRE-FEET

Purpose (use): FISH AND WILDLIFE  
Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use: (1 total records)

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNW	14	2S	4E	GALLATIN

 THE PLACE OF USE IS LOCATED IN CERTIFICATE OF SURVEY NO. 2235 TRACT A.

Geocodes/Valid: 06079714202030000 - Y

Remarks:

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

## GENERAL ABSTRACT

Water Right Number: 41H 6626 00 GROUND WATER CERTIFICATE

Version: -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners:

ANNE M HADD  
3567 E SUNRISE DR  
TUCSON, AZ 85718 3232

BOB HADD  
3567 E SUNRISE DR, STE 219  
TUCSON, AZ 85718 3232

LINCOLN TRUST CO  
TRUSTEE FBO JOSEPH R. HADD III  
3567 E SUNRISE DR, STE 219  
TUCSON, AZ 85718 3232

Priority Date: October 8, 1975 at 13:30 PM

Enforceable Priority Date: October 8, 1975 at 13:30 PM

Purpose (use):  DOMESTIC

Maximum Flow Rate: 30 GPM

Maximum Volume: THIS RIGHT IS LIMITED TO THE ACTUAL AMOUNT USED UP TO 10 ACRE-FEET

Source Name: GROUNDWATER  
Source Type: GROUNDWATER

Points of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2NW	14	2S	4E	GALLATIN
Period of Diversion: JANUARY 1 to DECEMBER 31						
Diversion Means: WELL						
Well Depth: 41 FEET						
Static Water Level: 13 FEET						

Purpose (use): DOMESTIC  
Households: 1  
Period of Use: JANUARY 1 TO DECEMBER 31


Place of Use: (1 total records)

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2NW	14	2S	4E	GALLATIN

Geocodes/Valid: 06079714202030000 - Y

Remarks:

OWNERSHIP UPDATE RECEIVED  
OWNERSHIP UPDATE TYPE 608 # 11948 RECEIVED December 15, 2003



**Water Right Number: 41H 6626 00**

**Map Click Function**

Select Identification Item ▾

**View**

Help

Abstract

Map

**Legend**

Diversion Count: 1

- ▲ Surface water diversion.
- Ground water diversion.

Adjacent Diversions:

- Surface water diversion.
- Ground water diversion.

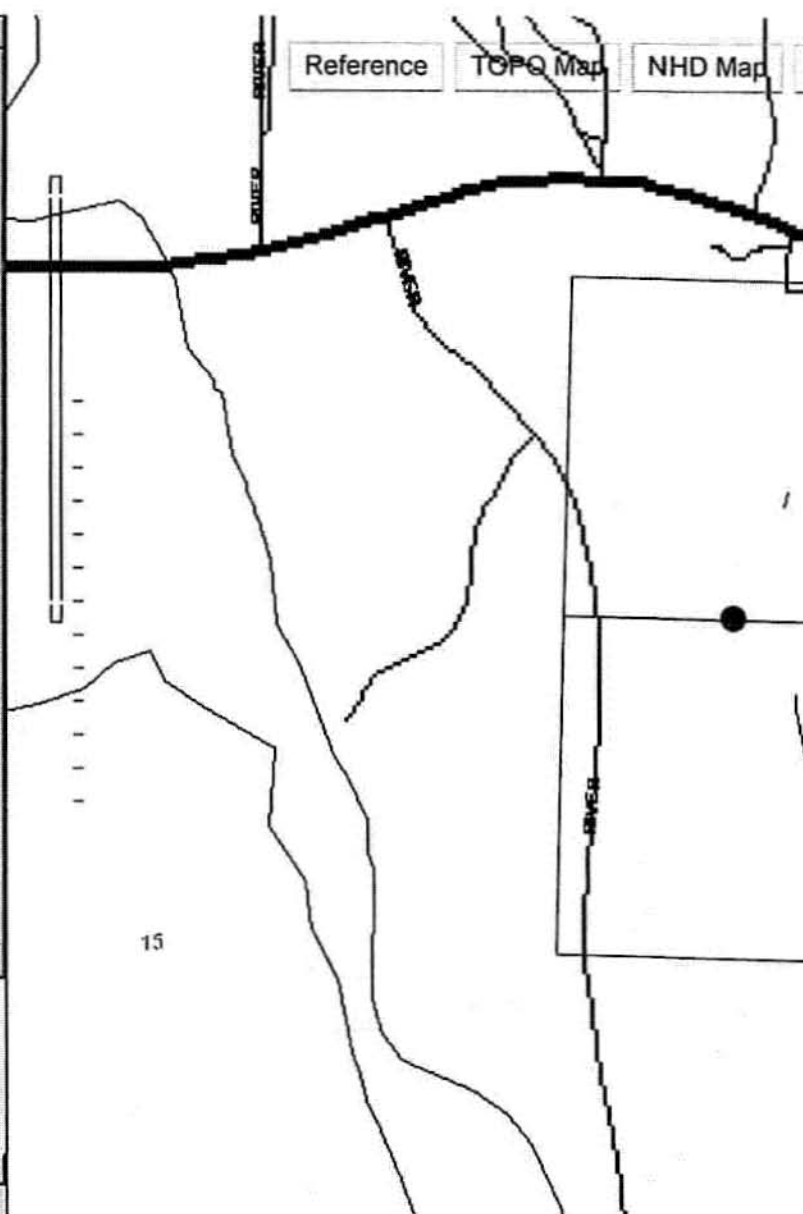
☐ Place of Use Legal Land Descriptions  
☐ Adjacent POUs

Click Left to Show Cadastral ?

Click Left to Show PLSS Detail ?

**Note:**

*The points of diversion (PODs) and places of use (POUs) are derived from water right legal land descriptions. PODs are placed at*



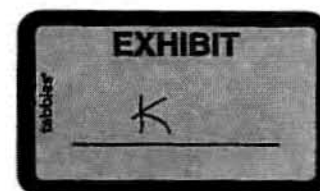




**Laura Ziemer**

*Director, Montana Water Project*

March 27, 2012



Mr. Tom Rogers, County Planner  
Gallatin County Planning Department  
Gallatin County Courthouse  
311 West Main Street, Room 108  
Bozeman, MT 59815

**Re: Hadd Family Subsequent Minor Subdivision**

Dear Mr. Rogers,

Trout Unlimited (TU) is dedicated to the conservation, protection, and restoration of coldwater fisheries, like the Gallatin River. Our members are active community participants in restoration projects along Montana's outstanding trout streams and rivers, and also participate in initiatives to protect water quality and restore flows. For these reasons, TU writes to express concern about the proposed Hadd Family Subsequent Minor Subdivision. Although it proposes to add just one home to the Gallatin River corridor, its location raises concerns about Gallatin River channel migration and water quality. The proposed subsequent minor subdivision is on a terrace just above the 100-year floodplain, and there is a very small area on this erosive terrace for a septic system and a home.

The February 28, 2012 Gallatin County Planning Department Staff Report notes, on page 4, section 5, that the existing home and guest house are currently out of compliance with their septic system and will require an upgrade to the system prior to the Gallatin City-County Health Department's ability to consider and approve an application for the additional proposed septic system. The Staff Report also notes, on page 5, section 7, that "high groundwater depths may cause difficult environmental attributes for the construction and function of a septic system." The Septic System Evaluation by RedLeaf provided by the applicant, on page 18, with Figure 3-1, states that "drainfield size is the limiting factor that will determine the number of bedrooms the proposed structure will be allowed to accommodate." The RedLeaf report concludes, on page 26, that the maximum size of the new structure can be no larger than three bedrooms.

TU requests that the Planning Department pay close attention to this proposal to ensure that the septic systems of the parent tract and the proposed subsequent minor subdivision are able to meet all Health Department standards and will be located well outside of the 100-year floodplain. This will require—at a minimum—a limitation on the size of the home on the proposed subdivided tract, and the number of bedrooms and people that can be accommodated

***Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization***

321 East Main Street, Suite 411, Bozeman, MT 59715

(406) 522-7291 ext. 103 • Fax: (406) 522-7695 • email: lziemer@tu.org • www.tu.org

on the subdivided tract. Indeed, the Staff Report raises legitimate concerns that high groundwater depths in this river-side area may prevent adequately-functioning septic systems on both the parent and subsequent minor tracts.

Finally, TU has concerns about the likelihood of additional bank armoring to the west bank of the Gallatin River that this additional home site could require. The Gallatin County Floodplain Administrator provided February 13, 2012 Comments to the Staff Report, attached as Exhibit C to the Staff Report. The County Floodplain Administrator noted that this reach of the Gallatin River is highly dynamic, and has experienced channel migration over time. While the applicant did provide evidence of a relatively stable channel over a short period of time, the County Floodplain Administrator noted that even with the proposed lot being outside of the 100-year floodplain, the "risk of channel migration persists." The County Floodplain Administrator also noted that the west bank of the Gallatin has already been armored to protect existing structures. Additional bank armoring to protect an additional proposed home in this highly active area of river migration is not in the best interests of the health of the Gallatin River, nor for downstream landowners. Rip-rapping the bank of the Gallatin just moves the problem of a naturally-migrating river channel downstream, and creates a bigger problem for those downstream landowners. TU urges the County Planning Department to take a close look at whether this minor subdivision can be approved without leading to additional, detrimental bank armoring of the Gallatin River.

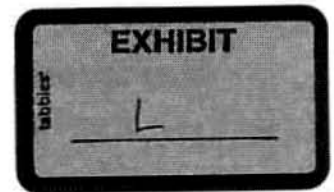
Please don't hesitate to contact me at [lziemer@tu.org](mailto:lziemer@tu.org) or (406) 522-7291 ext 103 if I can offer additional detail to this expression of our concerns that could be helpful to your consideration of the Hadd Family Subsequent Minor Subdivision.

Yours truly,



Laura Ziemer

Cc: Madison-Gallatin TU Chapter Board President, Mark Peterson



March 7, 2012

Confluence Consulting Inc.  
P.O. Box 1133  
115 N. 7<sup>th</sup> Ave, Suite 1  
Bozeman, MT 59771-1133

RE: Kughen Ditch Adjacent to the Proposed 2 Lot Minor Subdivision: Tract A, COS#  
2235 Located in the NW  $\frac{1}{4}$  S14, T02S, R04E P.M.M.

To Whom It May Concern:

The Kughen Ditch Co. has been notified of the process of the preliminary plat application for the Minor Subdivision referenced above. We do not foresee any adverse affects to the Kughen Ditch Co. by the creation of the minor subdivision. It is possible that because of the leaky nature of irrigation canals or because of flood irrigation to the pasture adjacent to the minor subdivision that at times the sub-water table on the referenced property may be raised. This has never been a problem in the past.

Sincerely,

A handwritten signature in black ink, appearing to read "George Alberda".

George Alberda  
Secretary/Treasurer Kughen Ditch Co.

Kughen Ditch Co.  
27027 Norris Rd.  
Bozeman, MT. 59718  
406-580-5555

After recording return to:

Spain - Ferris Ditch Co.

PO Box 785

Belgrade, MT 59714



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SPAIN-FERRIS DITCH COMPANY  
AND  
HADD FAMILY LIMITED PARTNERSHIP**

This Memorandum of Understanding is entered into this 24th day of February 2012 by and between the **Spain-Ferris Ditch Company** (hereinafter referred to as "the Canal") of P.O. Box 785, Belgrade, MT 59714, and **Hadd Family Limited Partnership, LLP** (hereinafter referred to as "the Developer") of 11651 North Vista Del Sol, Tucson, AZ 85742.

WHEREAS, the Developer is submitting a 2 lot proposal, Tract A of COS2235 located in the Northwest ¼ of Section 14, Township 02S, Range 04E, P.M.M., its proximity on the west side of the Gallatin River, fronting South River Road.

WHEREAS, the addressed lot division is located within 500 feet of the Canal, on the west side of the Gallatin River, the proposal of the named lot will not have any negative impact to the Canal.

IT IS AGREED AND UNDERSTOOD the property adjacent to the Canal is not developable and will remain unaffected.

**SPAIN-FERRIS DITCH COMPANY**

By: \_\_\_\_\_  
Its: President

By: \_\_\_\_\_  
Its: Director

By: \_\_\_\_\_  
Its: Vice-President

**HADD FAMILY LIMITED PARTNERSHIP, LLP**

By: \_\_\_\_\_  
J. Robert Hadd III

Its: \_\_\_\_\_

State of Montana )  
: ss  
County of Gallatin )

This instrument was acknowledged before me on \_\_\_\_\_ 2012, by **Duane Burkenpas**, as President of Spain-Ferris Ditch Company.

SEAL

Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

State of Montana )  
: ss  
County of Gallatin )

This instrument was acknowledged before me on \_\_\_\_\_ 2012, by **Bruce LaRue**, as Vice-President of Spain-Ferris Ditch Company.

SEAL

Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

State of Montana )  
: ss  
County of Gallatin )

This instrument was acknowledged before me on \_\_\_\_\_ 2012, by **Brian Dunning**, as Director of Spain-Ferris Ditch Company.

SEAL

Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

State of Montana )  
: ss  
County of Gallatin )

This instrument was acknowledged before me on \_\_\_\_\_ 2012, by **J. Robert Hadd III** as \_\_\_\_\_ (title) of **Hadd Family Limited Partnership, LLP**

SEAL

Printed Name: \_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_